2893.

SUPREME COURT OF THE UNITED STATES.

No. 242.

THE UNITED STATES, APP'TS,

vs.

CHARLES FOSSAT.

APPEAL FROM THE DISTRICT COURT OF THE U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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Order to file Mandate and Opinion of Supreme Court.

In the District Court of the United States for the northern district of California.

THE UNITED STATES
v.
CHARLES FOSSAT. } No. 132, D. C.—No. 340, L. C.

Stated Term, June 17, 1858.

The claimant, Charles Fossat, by his attorney, A. P. Crittenden, presented a duly authenticated copy of the mandate of the Supreme Court of the United States, and also of the opinion of said Supreme Court, and moved the court that the said mandate and opinion be ordered to be filed, and that the court proceed to enter a decree herein in conformity to said mandate and opinion; whereupon it is ordered by the court that the said mandate and opinion be filed, and that notice be given to the district attorney of the United States for the northern district of California of the claimant's motion to enter the decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed June 17, 1858.

W. H. CHEVERS, *Clerk.*

Opinion of the Supreme Court.

Supreme Court of the United States.—December Term, 1857.

THE UNITED STATES, Appellants,
v.
CHARLES FOSSAT. } No. 187.

Appeal from the district court of the United States for the northern district of California.

Mr. Justice Campbell delivered the opinion of the Court.

The appellee presented to the board of commissioners appointed under the act of Congress of the 3d March, 1851, (9 Statutes at Large, 632, ch. 41,) to settle private land claims in California, a claim for three-fourths of a league of land, known as part of the Cañada de los Capitancillos. He produced to the board satisfactory evidence of the authenticity of a grant from the governor of California, bearing date in 1842, to Justo Larios, for a parcel of land having that name; also, that Larios had occupied, improved, and cultivated it conformably to the conditions of the grant; that in 1845 he had sold it to a person from whom the appellee deduced his title to an undivided three-fourths interest, and that his share had been set apart to him by valid conveyance. The board pro-

nounced in favor of the validity of the grant, rendered a decree of confirmation in favor of the claimant, of land included in specific and well-defined boundaries, but adding as a part of the description the quantity that was embraced in them. It is somewhat doubtful whether the board designed to impose a limitation to the claim for the quantity thus declared. From this decree the United States appealed to the district court. In that court the appellee confessed that the decree of the commissioners was erroneous, because it did not describe in a manner sufficiently certain the boundaries of the tract of land intended to be confirmed to the claimant, and consented that the decision should be reversed, and such decree be entered in the district court as might be lawful and proper upon the whole evidence.

The claimant proceeded to examine a number of witnesses to identify the locative calls of the grant to Larios, and produced documentary evidence from the archives disclosing the circumstances under which the grant was asked for and obtained, in order to determine with exactness the subject on which it was designed to operate. He also procured a survey from the surveyor general for California to exhibit the extent and description of the land included in the claims of those who now represent the rights of Larios. Much counter evidence was adduced under the direction of private and adversary claimants, to whom the law officers of the government of the United States in California seem to have permitted the preparation of the case on the appeal to the district court, and who were allowed to maintain in the name of the United States the alternative of the issue tendered by the claimant.

The district court confirmed the claim of the appellee to land limited by specific boundaries, and ascertained those boundaries as they exist on the land with precision. Under this decree the grant to Larios includes seven thousand five hundred and eighty-eight $\frac{90}{100}$ acres.

It is the opinion of the court that the intervention of adversary claimants in the suit of a petitioner, under the act of the 3d March, 1851, for the confirmation of his claim to land in California, is a practice not to be encouraged. The board of commissioners was instituted by Congress to obtain a prompt decision on the validity of private land claims to enable the government to distinguish the public land from that which has been severed from the public domain by Mexico, and that it might fulfil the obligation assumed at the time of the cession of California, to secure and protect the property of its inhabitants. The jurisdiction of the board of commissioners in the first instance, and the appellate jurisdiction of the courts of the United States, are limited to the making of decisions on the validity of the claim, preliminary to its location and survey by the surveyor general of California, acting under the laws of the United States. This officer is required

to survey and to furnish plats of the claim that may be confirmed.

In reference to interfering and conflicting claims, he is authorized to decide by adopting the lines agreed to by the claimants, and in the absence of an agreement, to follow the rule of justice. The acts of Congress provide that neither the decisions of the commissioner, nor of the district or supreme court, nor of the surveyor general, nor the survey or patents made in pursuance of them, shall preclude a legal investigation and decision by the proper judicial tribunal, between parties having such interfering claims; and provision is made in the act of the 3d March, 1851, for a contest of the right of the confirmee before the issue of the patent, but after the location and survey, and a patent under the act is only conclusive between the United States and the claimant, and does not affect third persons. 9 Stats. at Large, 631, ch. 41; 4 Stats. at Large, 492, ch. 116, § 6.

The language and policy of these enactments limit a controversy like the present to the United States and the claimant.

We concur in the opinion of the board of commissioners and of the district court that affirms the validity of the grant of the governor of California to Justo Larios, and the regularity of the conveyances through which the claimant deduces his title.

The papers in the record show that in 1842 the proprietors of adjacent ranchos in the valley de los Capitancillos (Larios and Berreyesa) had a dispute concerning the location of their line of separation, which was carried before the public authorities for settlement; that Larios, after the adjustment of the controversy, represented to the governor that, since 1836, he had occupied his place in the Cañada under a purchase from a former proprietor; that the records of his title had been lost, and that he desired to obtain a grant which would declare his right. This petition was accompanied by a sketch of the property, and its contents were represented to be one league, a little more or less. The governor made the necessary order for the issue of the grant, in conformity to the prayer of the petition, and the grant itself was issued in August, 1842. In the grant the petition for the land known as Capitancillos, bounded by the sierra, by the arroyo Seco on the side of the establishment of Santa Clara, and by the rancho of the citizen José R. Berreyesa, which has for boundary a line running from the junction of the arroyo Seco and arroyo de los Alimitos, southward, to the sierra, passing by the eastern base of the small hill situated in the centre of the Cañada, is recited, and the governor granted it to Larios, to be his property, subject to the approval of the departmental assembly, and to the performance of four conditions. The second and third of these conditions are:

"2d. He shall solicit the proper judge to give him juridical possession, in virtue of this decree, by whom the boundaries shall

be marked out, and he shall put on the boundaries, in addition to the landmarks, some fruit trees or useful forest trees.

"3d. The land herein referred to is one league of the larger size, a little more or less, as is explained by the map accompanying this espediente. The judge who shall give the possession shall have it measured, in conformity to law, leaving the surplus which remains to the nation for the purposes which may best suit it."

The southern, western, and eastern boundaries of the land granted to Larios are well defined, and the objects exist by which those limits can be ascertained. There is no call in the grant for a northern boundary, nor is there any reference to the diseño for any natural object, or other descriptive call, to ascertain it. The grant itself furnishes no other criterion for determining that boundary than the limitation of the quantity, as is expressed in the third condition. This is a controlling condition in the grant. The delivery of juridical possession, an essential ceremony to perfect the title in the land system of Mexico, was to be accommodated to it. The diseño presented by the donee to the governor to inform him of his wants, represents the quantity to be one league, a little more or less. This representation is assumed to be true by the governor, and it forms the basis on which his consent to the petition is yielded. He prescribes to the officer to whom he confided the duty of completing the title to measure a specified quantity, leaving the surplus that remains to the nation as preparatory to the delivery of juridical possession to the grantee.

The obligation of the United States to this grantee will be fulfilled by the performance of the executive acts which are devolved in the grant on the local authority, and which are declared in the two conditions before cited. We regard these conditions to contain a description of the thing granted, and, in connection with the other calls of the grant, they enable us to define it. We reject the words "a little more or less" as having no meaning in a system of location and survey like that of the United States, and that the claim of the grantee is valid for the quantity clearly expressed. If the limitation of the quantity had not been so explicitly declared, it might have been proper to refer to the petition and the diseño, or to have inquired if the name Capitancillos had any significance as connected with the limits of the tract, in order to give effect to the grant. But there is no necessity for additional inquiries. The grant is not affected with any ambiguity. The intention of the government of California is distinctly declared, and there is no rule of law to authorize us to depart from the grant to obtain evidence to contradict, vary, or limit its import.

The grant to Larios is for one league of land to be taken within the southern, western, and eastern boundaries designated therein, and which is to be located, at the election of the grantee or his assigns, under the restrictions established for the location and sur-

vey of private land claims in California by the executive department of this government. The external boundaries designated in the grant may be declared by the district court from the evidence on file, and such other evidence as may be produced before it, and the claim of an interest equal to three-fourths of the land granted is confirmed to the appellee.

The decree of the district court is reversed, and the cause is remanded to that court, with directions to enter a decree conforming to this opinion.

True copy.

Test: WM. THOS. CARROLL,
C. S. C. U. S.

Endorsed: Filed June 17, 1858.

W. H. CHEVERS, *Clerk*.

Mandate of the Supreme Court.

[SEAL.] UNITED STATES OF AMERICA.

The President of the United States of America to the honorable the Judge of the District Court of the United States for the northern district of California, greeting:

Whereas, lately, in the district court of the United States for the northern district of California, before you, in a cause between the *the* United States, appellants, and Charles Fossat, appellee, the decree of the said district court was in the following words, viz:

"This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, the papers and evidence on which the said decision was founded, the petition of the appellants and answer of the appellees, and the further evidence given in this court, by leave of the court; and it appearing to the court that the said transcript has been duly filed according to law, and the appellee in open court confessing error in the said decision of the board of land commissioners, in this, that it does not describe in a manner sufficiently definite the boundaries of the tract of land intended to be confirmed to the claimant; and consenting that the said decision be reversed, and such decree be entered in this court as may be lawful and proper upon the whole evidence; and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged and decreed, that the said decision of the board of land commissioners be, and the same is hereby reversed.

And the court now proceeding to render a new decree in the premises, it is further hereby ordered, adjudged and decreed, that the grant made to Justo Larios, from whom the appellee, Charles

Fossat, derives his title, is a good and valid grant to said Larios of the place known by the name of "Los Capitancillos," situated in the present county of Santa Clara, and formerly occupied by the said Justo Larios, and bounded and described as follows, to wit: on the south by the main sierra, on a spur of which sierra is situated, as shown in evidence, a certain well known and conspicuous live-oak tree or "encino," and a portion of which sierra is separated, as shown in evidence, by the stream called the Arroyo de los Capitancillos, from the range of hills called Cuchilla de la Mina, or Cuchilla de la Mina de Luis Chabolla, in which are situated the quicksilver mines known as the Guadalupe, San Antonio, and New Almaden mines; on the west by the arroyo Seco, on the side of the establishment of Santa Clara, the said Arroyo Seco being the continuation of the same stream above designated as the Arroyo de los Capitancillos; on the east by a line running from the junction of a certain other rivulet called Arroyo Seco and the Arroyo de los Alamitos, southward to the aforesaid main sierra, passing by the point or part of the small hill situated in the centre of the Cañada which is designated in the espedientes and grants of Justo Larios and José Reyes Berreyesa as "La falda de la loma," and crossing the range of hills designated above as the Cuchilla de la Mina, or Cuchilla de la Mina de Luis Chabolla, and in which are situated the said Guadalupe, San Antonio, and New Almaden mines, and which is the same range of hills designated "Lomas Bajas" on the diseño or map, in the aforesaid espediente of José Reyes Berreyesa, the said eastern line herein described being intended to be the same line agreed upon as the line of division between the lands of Justo Larios and José Reyes Berreyesa, as expressed in the respective espedientes and grants of said Justo Larios and José Reyes Berreyesa, and delineated by the dotted line on the said diseño or map, in the espediente of José Reyes Berreyesa; in the location of said line reference to be made to the description thereof in the said espedientes and grants, and the delineation thereof on the said diseño or map, in the espediente of José Reyes Berreyesa, which espedientes, grants and diseño, or map, are on file and in evidence in this case; and the northern boundary of said tract of land granted to Justo Larios being the same which is shown in the diseño or map, contained in the espediente of Justo Larios, which is on file and in evidence in this case, the said tract of land containing one square league, more or less.

And it is likewise further ordered, adjudged and decreed by the court, that the claim of the appellee to a portion of the said described tract of land is a good and valid claim, and that the said claim be, and the same is hereby confirmed.

The land of which confirmation is hereby made to the appellee is the whole of the tract of land described above, and which was

granted to Justo Larios, with the exception of the two adjacent parcels thereof lying at the westerly end of said tract, and claimed by the Guadalupe Mining Company, and which was conveyed to the said Guadalupe Mining Company by the two instruments of writing which are on file and in evidence in this case, and marked, respectively, "Exhibit M" and "Exhibit P," the line dividing the land intended to be confirmed hereby to the said Charles Fossat from the land of the said Guadalupe Mining Company being the same which is expressed in said exhibits to be the eastern line of the tracts thereby severally conveyed, and the same which is more particularly designated as the eastern line of the lands of the Guadalupe Mining Company by the survey made by John La Croze, whose deposition, with the field-notes of said survey attached, is on file and in evidence in this case, and delineated on the map of said survey, certified by John C. Hays, U. S. surveyor general, which is also on file and in evidence, marked "Exhibit J. M.," attached to the deposition of John La Croze; to which exhibits, maps, deposition of John La Croze, and field-notes, reference is made for a more full description of the said line, which is the western line of the land hereby confirmed to the said appellee, Charles Fossat, as by the inspection of the transcript of the record of the said district court, which was brought in to the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby reversed, and that this cause be, and the same is hereby remanded to the said district court, with directions to that court to enter a decree in this cause in conformity to the opinion of this court. April 30th.

You, therefore, are hereby commanded that such further proceedings be had in said said cause, in conformity to the decree and opinion of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the U. S.

Endorsed: Filed June 17, 1858.

W. H. CHEVERS, *Clerk.*

Notice of motion to enter Decree.

District Court of the United States for the northern district of California.

THE UNITED STATES
v.
CHARLES FOSSAT. } D. C. 132.—L. C. 340.

SIR: You will please take notice that on Wednesday, the 23d of June inst., at 11 o'clock a. m., or as soon thereafter as counsel can be heard, at the court-room of said court, in the city of San Francisco, I will move the court to enter a decree in this cause in obedience to the mandate of the Supreme Court of the United States, and in conformity to the said mandate and the opinion of the said Supreme Court, duly certified copies of which mandate and opinion have been filed in this court. And a copy of the decree which I will then submit to the court and move to have entered, is herewith served upon you.

San Francisco, June 17, 1858.

A. P. CRITTENDEN,
Att'y for Chs. Fossat.

To P. DELLA TORRE, Esq.,
U. S. Attorney.

Service acknowledged of copy of within notice and of decree.
San Francisco, June 17, 1858.

P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed June 17, 1858.

W. H. CHEVERS, *Clerk.*

Order appointing R. Tobin Special Com'r.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-eight; present, the Hon. Ogden Hoffman, district judge.

THE UNITED STATES
v.
CHARLES FOSSAT. } No. 132.

Ordered that the above case be referred to Richard Tobin, esq., as special commissioner to take testimony and report the same to this court without delay; and leave is given to either side to move to set the cause for a hearing in default of due diligence on the part of the other in taking and closing the testimony.

OGDEN HOFFMAN,
District Judge.

Endorsed: Filed June 30, 1858.

W. H. CHEVERS, *Clerk.*

Order continuing motion to enter Decree until 30th June, 1858.

In the District Court of the United States for the northern district of California.

THE UNITED STATES
v.
CHARLES FOSSAT. } D. C. 132.—L. C. 340.

Stated Term, June 26, 1858.

This day came on to be heard the motion of the claimant, Charles Fossat, to enter a decree in this cause in obedience to the mandate of the Supreme Court of the U. S., and in conformity to the said mandate and the opinion of said Supreme Court, on file in this court, and it appearing to the court that due notice of the motion had been given to the district attorney of the United States for the northern district of California, and the said district attorney having appeared and opposed the motion, and represented to the court that he would desire to offer further evidence on behalf of the U. S., the nature of which he could not then state, nor the names of the witnesses, and asking that further time be allowed him, it is ordered that the claimant's motion be continued to Wednesday, the 30 day of June instant.

OGDEN HOFFMAN,
U. S. District Judge.

Endorsed: Filed July 2, 1858, as of June 26, 1858, by order of the judge, at which time the order was allowed.

W. H. CHEVERS, *Clerk.*

Deposition of J. R. Snyder.

United States District Court, northern district of California.

THE UNITED STATES
v.
CHARLES FOSSAT. } San Francisco, July 1, 1858.

On this day, before Richard Tobin, appointed a special commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came Jacob R. Snyder, a witness produced on behalf of the United States in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, P. Della Torre, U. S. attorney; E. Randolph, esq., for claimant.

Questions by U. S. Attorney.

Question 1. What is your name, and place of residence; and

what has been your occupation since you have been in California?

Answer 1. My name is Jacob R. Snyder; I live in San Francisco; I have been engaged in various occupations since I have been in California; I had an appointment as land surveyor in the middle district of California, under Col. Mason, who was then governor of the territory.

Question 2. Are you acquainted with that part of the country in which the land claimed in this case is situated? if so, state the mode and extent of your acquaintance with it.

Answer 2. I am; I made a survey of the rancho de los Capitancillos; I think in the fall of 1847, to the best of my recollection.

Question 3. At whose request?

Answer 3. The survey was made at the request of Grove C. Cook; he was owner of the rancho at that time.

Question 4. How did you proceed to locate the land?

Answer 4. I proceeded under the direction of Grove C. Cook; I commenced at what was called the angle of the creek; I run from thence a straight line across the valley, touching the foot of a hill in or near the centre of the valley; and from thence to the top of the mountain at a point where there is a bare rock cropping out, with a perpendicular face to the north; in fact, I put upon this rock a piece of white cloth to be used as a signal to obtain the bearing of the line; I remember it, because there was scarcely earth enough on the rock to plant the stick in. That rock was a little to the east of the mine; I mean by this, that the line which ran through the rock was to the east of the quicksilver mine, which was on Cook's rancho, or what Cook claimed as his. I will state, further, that Cook was particular in having that line run, as he said that he was under the impression that the mine was on his land. I then returned to the angle of the creek spoken of before, and run a traverse down the creek from the angle to its junction with the arroyo Seco; from thence I run a traverse up the arroyo Seco until I got into the mountain, where it became so bluff and perpendicular that I could not use the chain any longer; and from thence, to the best of my recollection, I closed the survey by triangulation between the point on the creek where I stopped, and the rock spoken of on the first boundary line.

Question 5. Who directed you in the running of these lines?

Answer 5. Grove C. Cook.

Question 6. Did you have with you the diseño of the Justo Larios rancho, or a copy of it?

Answer 6. No.

(The witness is now shown a copy of the diseño, and the following question is asked):

Question 7. Was the rock to which you ran your first line be-

yond the point at which the creek laid down on the diseño as the arroyo de los Capitancillos issues from the mountain?

(This question is objected to by counsel for claimant, on the ground that the reference to the diseño is an improper mode of designating the stream and mountain mentioned in the question, the witness having shown himself fully acquainted with the face of the country, and capable of giving the information sought in the clearest manner from his own knowledge.)

Answer 7. I cannot answer that question, because I ran the line without any reference to the creek, but my impression is that the creek was some distance from the line, and to the left of it, in running from the starting point.

Question 8. How far up the mountain was this rock of which you speak?

Answer 8. I cannot tell the distance; I do not recollect it; but it was on the brow of the mountain, overlooking the valley.

Question 9. At what part of the rancho was the settlement at that time?

Answer 9. The house in which Grove Cook lived at that time was on the bank of the creek, a short distance below what is called the angle in the creek—the starting point.

Question 10. What was the character of the mountain side up which you run your first line to reach the rock?

Answer 10. A portion of it was low hills, and the rest of the mountain was more abrupt. It was covered with a growth of oak trees.

Question 11. In running the first line, did you stop that line at a point where, as in this diseño, the arroyo is represented as coming out on a plain, or did you go on up the mountain side?

(This question is objected to by claimant's counsel, because it refers to the diseño as before objected.)

Answer 11. If these hills on the diseño are intended to represent the low hills coming down into the plain or valley on the south, then I run my line over these hills into the mountains.

Cross-examination.

Question 1. When you closed your survey, did you embrace the land which in 1847 Grove C. Cook claimed as his rancho?

Answer 1. I did.

Question 2. Was the quicksilver mine now called New Almaden, inside or outside of that survey?

Answer 2. Inside.

Question 3. Was the range of hills in which are situated the Abrego mine, now called the Guadalupe mine, the San Antonio mine, and the said New Almaden mine, inside or outside of that survey?

Answer 3. The Abrego or Santa Clara mine, the Guadalupe

mine, and the Almaden mine were inside of that survey. The other I know nothing about.

Question 4. How is the ridge, in which are situated the mines to which you have referred, separated from the main sierra?

Answer 4. To the best of my recollection a portion of it is separated from the main sierra by the arroyo Seco, and a portion of it is connected with the main sierra by a divide at the headwaters of the aforesaid creek.

Question 5. On the other side of that divide how is the continuation of the said range of hills separated from the main sierra?

Answer 5. I am unable to say. At one side of the divide are the headwaters of the creek which assists in forming the angle at the point of beginning. On the other side of the divide are the headwaters of the arroyo Seco.

Question 6. Was not this land which you surveyed, and which was claimed by Grove C. Cook in 1847, then used as a grazing rancho, and were there not cattle grazing at that time on the said range of hills, in which are situated the said mines?

Answer 6. It was used as a cattle ranch, and there were cattle grazing on the hills spoken of.

Question 7. In the survey which you made, how did you establish the southeastern corner?

Answer 7. It was established by triangulation and calculation. I did not go over the ground. I took the rock as one point on the eastern line, and the point at the head of the arroyo Seco on the southern line, and by a calculation prolonged those two lines until they intersected each other, and sent a man to the point of intersection; a flag was planted there, and that was the southeast corner.

Question 8. Was that point of intersection north or south of the arroyo de los Alamitos, or rather, did the eastern line extended to that point of intersection cross the creek and terminate on the slope of the main sierra?

Answer 8. To the best of my recollection, I think it did.

Re-examination

Question 1. Did you cross the divide you have spoken of longitudinally, so as to observe the connection of the mining ridge with the other mountains?

Answer 1. I did not.

Question 2. Then you are unable to speak of the connection between them?

Answer 2. I am unable from personal examination.

Question 3. Do you know the distance at which cattle were in the habit of ranging among the mountains in that neighborhood, at the time of which you speak?

Answer 3. I have seen them on both sides of the arroyo Seco; I cannot say how far they went into the mountains.

Question 4. What quantity of land was contained in the survey which you made?

Answer 4. To the best of my recollection, there was about two leagues.

Question 5. Were the instruments you employed in the survey of an accurate description?

Answer 5. No.

Examination closed.

JACOB R. SNYDER.

Sworn to and subscribed before me, this 1st day of July, 1858.

RICHARD TOBIN,
Special Comm'r.

Endorsed: Filed July 3, 1858.

W. H. CHEVERS, *Clerk.*

Deposition of Charles T. Healy.

United States District Court, northern district of California.

THE UNITED STATES }
vs. }
CHARLES FOSSATT. }

SAN FRANCISCO, *July 2d*, 1858.

On this day, before J. Edgar Grymes, a special commissioner and referee, appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Charles T. Healy, a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, P. Della Torre, esq., U. S. district attorney; Edmund Randolph, esq., for claimant.

Questions by the District Attorney.

Question 1st. What is your name, age, and place of residence?

Answer. Charles T. Healy; 24 years old; and I reside in San José, Santa Clara county.

Question 2. What is your occupation?

Answer. I am county surveyor of Santa Clara county.

Question 3. Are you acquainted with the rancho of Justo Larios, being the land named in this case?

Answer. Yes, sir.

Question 4. Are you acquainted with the topography of that ranch, and of the surrounding country? and if so, please describe it.

Answer. I am acquainted with it; in that vicinity there are two

creeks or branches which are the boundaries of the northern side of the valley in which the Justo Larios ranch is situated, and upon the southern side of said valley there is a range of mountains; there is also a range of hills running along the northeast side of said valley, on the northeast side of the creek.

Question 5. Do you know the range of mountains in which are situated the New Almaden, Guadalupe, and San Antonio mines?

Answer. Yes, sir.

Question 6. Are the mountains in which those mines are situated part of the sierra which lies to the southward of said rancho?

(Question objected to by claimant's counsel as leading.)

Answer. According to my understanding of the manner in which descriptions are given of mountains generally, they are.

Question 7. Describe the connection and relative position of the mining range to the other mountains, lying to the southward of said rancho.

(Witness is requested to look at the map made by J. W. Lewis in this case.)

Answer. The mountains in which the mines are situated are connected with the main sierra, or mountains, by a ridge which is but 3 or 4 hundred feet lower than the highest point of the hills in which the mines are situated. The hills in which the mines are situated are separated from the main sierra only by ravines or gulches in which these creeks first spoken of have their source, and are not wholly cut off from the main mountains by those. They also partake generally of the same characteristics of the main mountains, being in many places quite rugged and precipitous. There are no valleys lying between the main mountains and the hills in which the mines are situated. The ridge first spoken of is the water-shed from which the waters run northerly and southerly, into the two creeks first spoken of.

Question 8. What is the topographical formation of the sierra generally?

(At this point the claimant's counsel objects to the examination of the witness by the counsel, who at the request of the district attorney has propounded the foregoing question, because he is the counsel of the New Almaden Company, who are also claimants of this land or portion of it, and whose interests are therefore adverse to the claimant in the present case.)

(Mr. A. C. Peachy, the gentleman who is requested by Col. Della Torre to propound the foregoing question during the district attorney's temporary absence from this room on business, desists from urging an answer until the court can have the opportunity to pronounce upon the validity of the objection.)

Before the above question had been put, the district attorney had been called from the room where the deposition had been taken, by other and urgent business of his office, stating before he left the

room that he left a question to be put to the witness during his absence, to which no objection was taken at that time.

The counsel for claimants being willing in all matters to oblige the district attorney, still feels it incumbent upon him to claim the benefit of the opinion of the Supreme Court of the United States rendered in this case.

The above question is again repeated by the United States district attorney.

Upon motion of E. Randolph, esq., claimant's counsel, the examination is adjourned until to-morrow, at 1 o'clock.

J. EDGAR GRYMES,
Special Commissioner.

SAN FRANCISCO, *July 3d*, 1858.

This question being submitted to the court, and the district attorney and E. Randolph, esq., having been heard, the court declined to interfere with the exercise of the district attorney of a discretion to avail himself of the assistance of, or be represented by any gentleman of the bar, at the taking of depositions or on the hearing of any cause.

Examination resumed from yesterday.

Present, U. S. district attorney and Edmund Randolph, esq.; and A. P. Crittenden, esq., counsel for claimant. A. C. Peachy, esq., also appears for the United States.

Question 8th is again repeated by the U. S. district attorney.

Answer. The sierra consists of irregular broken ridges and peaks intersected by numerous ravines and gulches; the higher portions of the mountain covered with chapparal, with but little timber, and the lower portions in places covered by wild oats. According to my judgment the highest peaks have an altitude from 3 or 4,000 feet above the tide; I think the general course of the range is southeast; there are numerous spurs running out into the valley to the northeastward connected with the main range. There are severally small streams which have their source in these mountains, but which sink and are dried a portion of the year upon the plains. In some of the gulches redwood is found; cinnebar is also found in these mountains.

Question 9. Examine the diseño on file in this case and say if the range called Sierra del Encino, thereon, is capable of being located by means of the other natural objects delineated on said diseño? If you answer in the affirmative, state what are said natural objects and what range, according to said diseño, is the southern boundary of the said land.

(Question objected to on the ground that it asks merely the opinion of the witness, and that it asks his opinion founded upon the diseño alone, without reference to the grant.)

Answer. I think that the Sierra del Encino is capable of being

located by means of the other natural objects, because upon the diseño the two creeks are delineated as though a continuation of their lines would partially embrace that portion of the sierra in which the mines are situated, and because they are represented as lying southwardly from the junction of the said creeks called Capitáncillos and arroyo Seco; also, from the position of the hills called "Lomas Bajas," I should say that that range of mountains or hills in which the New Almaden mines, Guadalupe mines, and San Antonio mines, or the northern slope or foot of said range, or, in general terms, the range itself, is the southern boundary of said rancho, according to the diseño.

Question 10. Do you recollect the location of the range of mountains in which the said mines are situated with reference to the water-courses delineated upon the diseño?

Answer. I do, to some extent.

Question 11. What range of mountains is it that the two creeks pass through last on their entrance into the plain or cañada?

(Objected to on the ground that the question assumes that the two creeks passed through a range of mountains, and that a plain or cañada are the same thing, both which presumptions are not true.)

Answer. They issue from the range of mountains in which the mines are situated.

Question 12th. Look upon the diseño and state what direction the streams upon it take, beyond the points at which they are represented thereon.

(Objected to on the ground that the question is one that is impossible to answer, as looking at the diseño can furnish no information as to the course of streams not delineated on it.)

Answer. There being no points of compass written on the diseño, I cannot explain it intelligibly by making use of the terms north, south, east, or west, alone.

Question 13. Assuming the mountains marked on the diseño as Sierra del Encino to be the southern part of the diseño, with the other points of the compass relative to such position, can you now answer the question?

Answer. The general course of the streams appears to be from the southward.

Question 14. Look upon the map of survey filed in this case, as made by W. J. Lewis, and say if you can identify the points at which those two streams issue from the mountain.

Answer. I can.

Question 15. Please designate those points.

Answer. According to one view in the matter, you might say in the vicinity of Walkinshaw's house is the point which the arroyo of the Alamitos leaves the mountains. The arroyo Seco may be said to leave the mountains at a point marked "furnace."

Cross-examination by A. P. Crittenden, Esq., one of the counsel for Claimant.

Question 1. When did you come to California?

Answer. In 1852.

Question 2. Where were you educated?

Answer. I was educated in the State of Vermont.

Question 3. What opportunities have you had of acquiring knowledge of surveying?

Answer. From my attendance at school, and knowledge of mathematics obtained at school; from my having been engaged in the manufacture of mathematical instruments, and from the practice which I have had with my brother, who is a surveyor in this country.

Question 4. Have you made many surveys yourself?

Answer. I have.

Question 5. Have you any experience in the location of land claims in California?

Answer. I have never been appointed a United States deputy surveyor, but have made surveys in part, and assisted in the surveys of several.

Question 6. Have you resided in Santa Clara all the time since your arrival in California?

Answer. Yes, sir, with the exception of a few months.

Question 7. At what place in Santa Clara?

Answer. In the town of Santa Clara and vicinity, and in the city of San José.

Question 8. How often have you been on the land claimed in this case?

Answer. Very frequently.

Question 9. How often have you ever passed along between the main sierra and the range of hills in which the Almaden, San Antonio, and Guadalupe mines are situated?

Answer. I have frequently been at a point upon the creek above the Guadalupe mines, and upon one occasion passed along the ridge connecting the hills in which the mines are situated with the main sierra.

Question 10. Did you ever pass around the range of hills in which the mines are situated; I mean the whole distance going up the headwaters of arroyo Seco, and down the headwaters of the Alamitos?

Answer. I never had strictly followed their courses, but have been in positions frequently where I could see them.

Question 11. When was it that you were on the ridge connecting the sierra with the range of hills in which the mines are situated?

Answer. In the month of June, 1858.

Question 12. Who was with you?

Answer. Mr. Young and Mr. Rogers.

Question 13. What Mr. Young and what Mr. Rogers; where do they live, and what do they do?

Answer. Mr. John Young, who resides at the mine, and is, I understand, the superintendent of the mine; and Mr. Rogers, who was introduced to me as Mr. Rogers, and of whom I know nothing further of my own knowledge.

Question 14. At whose request did you go there, and for what purpose?

Answer. An the request of Mr. Young, who wished me to acquaint myself with the topography of the country.

Question 15. Did you go as a surveyor, employed for the purpose, and for compensation?

Answer. I so understood it at the time the application was made, though no definite contract was made.

Question 16. For whom did Mr. Young act in employing you?

Answer. I do not remember that particular reference was made to any parties, except that it was probable that I should be called upon to testify in relation to the Justo Larios claim.

Question 17. You look to Mr. Young, do you not, for compensation for your services and time in making an examination of that section of the country, for the purpose of acquainting yourself with its topography?

Answer. Yes, sir.

Question 18. Had you any papers before you at any time, or *where* any exhibited to you?

(Question objected to as not being in cross-examination of anything stated by the witness in his direct examination.)

Answer. No, sir.

Question 19. Had any papers or map been exhibited to you previously to your going on the ground?

Answer. None, except the maps of Mr. Lewis, and a pencil copy of the diseño of Justo Larios.

Question 20. Who exhibited those to you, and where?

Answer. Mr. Young, at his office, at the Almaden mines.

Question 21. When was it that he exhibited them to you; how long before you went on the ground?

Answer. The same day.

Question 22. For what purpose did Mr. Young exhibit to you the map made by W. J. Lewis?

Answer. For the purpose of determining the route we should take over the hill, and the distance we would have to go, and of ascertaining my views of its correctness from my previous knowledge of the country.

Question 23. Was there any one else present at the time when Mr. Young exhibited to you that map and diseño; if yes, who?

Answer. If I mistake not, Mr. A. J. Halleck was present.

Question 24. How long were you occupied in examining these maps and the topography of the country?

Answer. Two days; I was only a few minutes examining the maps.

Question 25. What route did you take in making this examination of the country?

Answer. The first day we went from the hacienda down to the junction of the two creeks; the second day we went from the hacienda up to the mine; from thence over to the ridge spoken of, and beyond, a portion of the distance up the main mountain; thence down into the cañon of the creek which passes the Guadalupe mines, following it around to the junction of the creek spoken of before.

Question 26. On what days in the month of June, 1858, did you make this examination?

Answer. On the 25th and 26th of June.

Question 27. At whose request do you now attend as a witness?

Answer. I was to keep myself in readiness; Mr. A. C. Campbell was to notify me when to come down. I came down upon notice from him, and have since attended at the request of Mr. A. C. Peachy.

Question 28. Do you understand the Spanish language, and can you speak it?

Answer. I do not speak it fluently, but can make myself understood upon general subjects in conversations; but well enough to attempt to interpret in all cases that might come before me in business.

Question 29. Would you call that elevated land in which the Almaden and Guadalupe mines are situated, a range of hills, or a mountain?

Answer. The manner in which the term is generally applied, I should call it a mountain, or a part of a range of mountains.

Question 30. What, then, would you call the more elevated range lying to the southward of it?

Answer. A range of mountains.

Question 31. You say that according to your understanding of the matter in which descriptions are given of mountains generally, the range of hills in which those mines are situated is part of the sierra; please to state particularly your reasons for that assertion.

Answer. Because they are not isolated or entirely disconnected from the main mountains by any streams or valleys, the ridge connecting them being perhaps only three or four hundred feet lower than the highest point of the peak of the mine, which I should think was between 1,500 or 2,000 feet high, and because they partake somewhat of the character of the main mountains, as much so at least as any other spurs running out from the main mountains.

Question 32. In what respects does it partake of the character of the main mountain?

Answer. In being rugged and cut up by ravines, and in being covered in places by wild oats and some timber, the same as the lower portions of the other mountains and spurs.

Question 33. Is that the character of the whole of that range from the arroyo Seco to the arroyo de los Alamitos? Do you mean to say that it is all rugged?

Answer. There are portions of it not so rugged as others, and in this respect it resembles other spurs or parts of the main mountains next to the valleys.

Question 34. Do you mean to be understood that the similarity of appearance is one reason why you say that this range is a part of the main sierra?

Answer. Yes, sir.

Question 35. Is not this range of hills completely separated and cut off along its whole length from the main sierra by two streams, the arroyo Seco and the arroyo de los Alamitos, and by the valleys in which those streams flow, with the exception of the narrow space occupied by the connecting ridge?

Answer. It is; but the term ravine or cañons *are* more proper to be applied to these two creeks than valleys.

Question 36. What is the difference between a valley and a ravine?

Answer. I understand a valley to mean generally a comparatively level tract of land lying between ranges of hills or mountains, having much greater width than the term ravine implies.

Question 37. What do you mean when you say in your answer, in question 6 of the direct examination, "according to my understanding of the manner in which description is given of mountains generally?"

Answer. I mean, and should have said, from my understanding of the term mountain as generally applied.

Examination adjourned until Tuesday, at 12 o'clock.

SAN FRANCISCO, *July* 6, 1858.

Examination resumed from Saturday, July 3d, 1858.

Present, P. Della Torre, esq., district attorney; A. P. Crittenden, esq., and Edmund Randolph, esq., for claimant.

Question 38. What lies to the northward of the range of hills which you speak of in your answer 4 of the direct examination "as a range of hills running along the northeast side of said valley?"

Answer. Generally speaking, the valley of Santa Clara.

Question 39. Crossing the valley of Santa Clara, going northward, you come to another range of mountains, do you not?

Answer. Yes, sir, the mountains called the Coast range.

Question 40. Have those Coast range of mountains the same general appearance and characteristic as the sierra of which you have been speaking?

Answer. I think they are not so rough, and are not so much covered with chapparel.

Question 41. Are they as rough and as much covered with chapparel as the range of hills in which the mines are situated?

Answer. Perhaps there is not much material difference.

Question 42. Look at the diseño referred to in your answer to question 9 of the direct examination, and state what you mean in your answer to that question when you say that the two creeks "are delineated as though a continuation of their lines would partially embrace that portion of the sierra in which the mines are situated?"

Answer. Because it appears that if these lines were extended the mountains would be between the creeks, which mountains, from their location, appear to be the ones in which the mines are situated.

Examination adjourned until to-morrow, Wednesday, July 7th, 1858, at 10 o'clock a. m.

(Signed) J. EDGAR GRYMES,
Special Commissioner.

SAN FRANCISCO, *July 7th*, 1858.

Examination resumed from yesterday.

Present, P. Della Torre, esq., United States district attorney, and A. C. Peachy, for the United States, and A. P. Crittenden, esq., and Edmund Randolph, esq., for claimant.

Question 43. Do you mean to say that if the lines representing those creeks were prolonged in the direction which they have on the diseño, they would bend around towards each other so as to include the range marked Sierra del Encino in anything like the same manner in which those creeks include the range in which the quicksilver mines are situated?

Answer. I mean that upon the diseño the creeks appear to be issuing from the mountains at points much more distant from each other than their respective sources are in the main mountains. These two creeks have their source in the mountains quite near each other, separated only by the ridge or water-shed before mentioned; and in their course to the northward they diverge, running nearly in opposite directions until at the points where they issue from the mountains, when they tend toward each other and meet at nearly as shown in the diseño.

Question 44. Question 43 is repeated, and in explanation of it the witness's attention is called to question and answer 42.

Answer. Allowing that the mountains marked upon the diseño are intended to represent the main range of mountains, leaving

out those in which the mines are situated, the two creeks would necessarily, in order to have approximated to a true map of the country, been drawn with their sources much nearer together than they are, and running in opposite directions along the northern base of said mountains, whereas in the diseño they appear to be issuing from the mountains at points distant from each other, as I have before stated, and in a manner approximating of their course upon the ground.

(Answer objected to by claimant's attorney as not responsive to the question.)

Question 45. You mean only to say, do you not, that such would be the case if this rough sketch were an accurate representation of the country, and if it represented the whole course of those streams near their heads?

Answer. I do not think, from the general feature of the diseño, that it was drawn so carelessly or roughly as to warrant the supposition that so important a part of it was neglected as the position of the source of those two streams.

(Answer objected to as not responsive to the question.)

Question 46. I did not ask your opinion as to the degree of carelessness with which the diseño may have been drawn, but only whether your answer to question 44 was not founded altogether on the supposition that that diseño was correct, and represented the course of those streams near their heads. Question 45 repeated.

Answer. My answer to that question was founded upon the supposition, that the lines of the diseño are generally correct as far as produced.

Question 47. When in your answer to question 9, you say that that range of mountains or hills in which the New Almaden, Guadalupe and San Antonio mines are, is the southern boundary of the rancho, according to the diseño, you speak, do you not, only in reference to the diseño?

Answer. Yes, under the belief that the mountains shown upon the diseño are intended to represent those in which the mines are situated.

Question 48. In that answer you give, do you not, three reasons for that opinion: 1st, that a continuation of the lines of the two creeks would partially embrace that portion of the sierra in which the mines are situated; 2d, that the Sierra del Encino is represented as lying southwardly from the junction of the two creeks, called Capitancillos and arroyo Seco; and 3d, from the position of the hills called Lomas Bajas. Am I correct in stating your reasons?

Answer. Yes.

Question 49. Have you any other reasons in addition to those above stated?

Answer. I might mention the point called "Portesuelo," and

the line of the lands of Santa Clara, such as I infer are meant by the words on the diseño, the line of the rancho of Berreyesa; the mountains also appear to be shown somewhat as they would appear when viewed from the arroyo de los Capitancillos. It is also my opinion, that mountains so high as those of the mines would not have been omitted, and it is natural to suppose that the first mountains occurring south of the valley or cañada would have been shown on the diseño.

Question 50. Have you now stated all your reasons?

Answer. Other reasons might occur to me, upon reflection, but I do not think of any others at this moment.

Question 51. The reasons you have given already are the only ones, are they not, upon which you have founded the opinion you have expressed, that the range marked Sierra del Encino on the diseño represents the range in which the mines are situated?

Answer. They are; though, as I said before, others might occur to me.

Question 52. Have any others occurred to you?

Answer. Not that I remember at this moment.

Question 53. What is the meaning of the word "lindero?"

Answer. I think it means boundary, but I have never consulted the dictionary.

Question 54. If the two creeks were prolonged in the directions which they have, as delineated on the diseño, would they approach or diverge from each other?

Answer. They would diverge.

Question 55. You have assigned as one reason for your opinion, that the range marked Sierra del Encino on the diseño is represented as lying southwardly from the junction of the creeks called Capitancillos and Arroyo Seco; how does that fact support your opinion that the Sierra del Encino is intended to represent the range in which the mines are situated, rather than the main sierra to the southward of it?

Answer. Because they appear to lie between the two creeks as in nature. Were they intended to represent the main sierra alone, they would have been shown as lying partially outside of and to the southward of their source.

(Answer objected to as not responsive to the question.)

Question 56. How does the fact, that the range marked Sierra del Encino as lying southwardly from the junction of the two streams, tend to prove that that range means the one in which the mines are situated, rather than the main sierra, since both the sierra and the range including the mines lie to the southward of the junction of the creeks?

Answer. Because they are the first mountains that occur to the southward of the junction of the creeks upon the southern side of the valley or cañada.

Question 57. Another of your reason is, the position of the hills called Lomas Bajas; how is that a reason why the range marked Sierra del Encino should be intended for the mine ridge, rather than the main sierra, as both the latter occupy the same relative position with the Lomas Bajas?

Answer. Because, as one of the details of the map or diseño, they assist in identifying different points in the topography. They are not so high as the mountains of the mines, and there is no reason clear to *one* why they should be shown upon the diseño, and those of the mines omitted.

(Objected to, as not responsive to the question.)

Question 58. You have stated the position of the hills called Lomas Bajas as one of the grounds of your opinion that the range marked Sierra del Encino is intended to represent the mine ridge; how do the positions of these hills tend to prove that?

Answer. From the fact that they are represented as running parallel with the arroyo de los Capitancillos, and with the general direction of the valley or cañada and mountains, in which the mines are situated, and that they lie to the northward of the objects named, nearly in the manner in which they exist in nature.

Question 59. Where are the Lomas Bajas represented on that diseño as parallel with the mountains in which the mines are situated?

Answer. They are the mountains marked Lomas Bajas. In speaking of the mountains in which the mines are situated, in answer to previous question, I had reference to the mountains marked Sierra del Encino.

Question 60. From the fact that the Lomas Bajas are represented as being parallel with the arroyo de los Capitancillos, and with the general direction of the valley, and with the range marked Sierra del Encino, how does it follow that that range was intended to represent the mine ridge rather than the sierra, the two latter being themselves parallel?

Answer. Because the mountains in which the mines are situated are the first which occur to the southward of the Lomas Bajas.

Question 61. In your answer to the question 57, you say that the Lomas Bajas are not so high as the mountains of the mine; are they as high as the main sierra?

Answer. No, sir.

Question 62. You have mentioned, as one of the grounds of your opinion that the Sierra del Encino is intended for the mine ridge, the fact that the Portozuelo is designated on the diseño. How does that fact tend to prove it?

Answer. From its being represented to the northward of the Sierra del Encino, and from there being no other range of mountains shown between those points.

Question 63. You have also stated amongst the ground of your

opinion, the designation on the diseño of the line of the lands of Santa Clara. How does that tend to show that the range marked Sierra del Encino was intended to represent the mine ridge, and not the main sierra?

Answer. Because they are the first to occur to the southward of said lands.

Question 64. Please answer in regard the last question in reference to the line of the rancho of Berreyesa, to which you have referred.

Answer. From the direction which the Sierra del Encino has from the line of Berreyesa, referred to.

Question 65. Has not the main sierra the same direction from the line of Berreyesa as the main ridge has?

Answer. It has.

Question 66. You have stated that the mountains (referring to the Sierra del Encino) delineated on the diseño, also appear to be shown somewhat as they would appear when viewed from the arroyo de los Capitancillos. Do you mean that you could pretend to identify the range intended by the Sierra del Encino by the manner in which the outline is drawn?

Answer. I do not. I had reference only to its direction, and to there being represented a long line of mountains between the points where the two creeks issue from the range.

Question 67. What has the direction to do with the question, when the direction both of the main sierra and the mine ridge have the same direction?

Answer. Were the mountains in which the mines are situated omitted in the view, the points at which the two creeks issue would be shown as nearer together.

(Answer objected to, as not responsive to the question.)

Question 68. Last question repeated, and witness's attention called to question and answer 66.

Answer. I had reference to the fact that the ridge in which the mines are situated is the nearest to the creek, and is the first object presented to the view in looking in a southerly direction from the creek; although from that point the mountains appear to be a more continuous range than when examined from a nearer point. The cañons in which the two creeks have their source are not easily distinguished.

(Answer objected to, as not responsive to the question.)

Question 69. In your answer to question 66, why do you refer to the direction of the range marked Sierra del Encino?

Answer. Because, from the length of the range shown between the points where the creeks issue therefrom, it approximated nearer to a correct view of the range as it is, than as though the ridge where the mines are situated were wholly omitted.

Question 70. Do you observe that there are any other important objects besides the main ridge, which are on that tract of land, and which are not delineated on that diseño; if so, what objects?

Answer. There are no objects omitted which are of so important a character in the topography as the ridge in which the mines are situated. There are a few small hills lying in the valley, which are not shown upon the diseño. There is also a creek or branch which flows from the eastward into the arroyo de los Capitancillos, which is not shown upon the diseño.

Question 71. What do you mean by the word "topography?"

Answer. I mean a delineation of the natural objects which diversify the face of the country.

Question 72. Do you know, as a matter of fact, where the range or part of the range is which bears the name of Sierra del Encino?

Answer. I have heard the term applied to a spur of the mountains in which the mine of New Almaden is situated, distant from the spur in which the mines are situated, and also to the spur itself in which the mines are situated; and, also, I think I have heard the term applied to the mountains in that vicinity generally, but it is not familiar to me, nor have I been accustomed to use the term in connection with those mountains.

Question 73. Who did you ever hear apply that name to what you call the spur in which the Almanden mine is situated, and when, and where?

Answer. I do not recollect that I have ever heard the term used at all, except with reference to the dissension which has been had as to which of the spurs the name properly belongs to. Some two months ago, perhaps longer, I had occasion to make a survey in that vicinity with Mr. Avy, of San José. In conversation with him, in regard to the settlement of the boundaries of the Justo Larios rancho, he pointed out to me what he thought to be the Sierra del Encino, which was not the one in which the mines are situated, and also stated that other parties claimed that the name properly belonged to the last named ridge. I cannot now state who I have heard say positively that the name belonged to the ridge in which the mines are situated, as I never paid particular attention to the matter.

(U. S. district attorney objects to the whole of the foregoing answer.)

(The counsel for claimant objects to all except the last sentence.)

Question 74. Can you not recollect when you first heard it so called?

Answer. I cannot say positively, but I think that name was applied to the ridge in which the mines are situated by Mr. Young, upon the occasion referred to, at the commencement of my exami-

nation. I had never paid so particular attention to the names, especially the Spanish terms, applied to natural objects as to their position and characteristic.

Question 75. Did you, at that or any other time, have any conversation with Mr. Young in regard to what was intended by the range designated Sierra del Encino on the diseño?

Answer. He gave it as his opinion, at the time referred to, that the mountains shown upon the diseño were the ones in which the mines are situated. But little use, however, was made of the term Sierra del Encino. He seemed to attach more importance to the position of the mountain than to its name.

(Answer objected to as not responsive to the question, no question having been asked as to the terms of the conversation nor the views of Mr. Young.)

Question 76. Is this Mr. Young the present superintendent of the New Almaden mine?

Answer. I believe he is.

Direct resumed.

Question 1. Is not the diseño in this case easily comprehensible as a sketch of the country, if you regard the Sierra del Encino there delineated as being the range of mountains in which the New Almaden and Guadalupe mines are situated?

Answer. I think it is.

Question 2. You are asked upon the cross-examination, question 27, at whose request do you now attend as a witness? Please read the question and answer, and state if you had any communication from any officer of the government in relation to your attendance?

Answer. I had; I was introduced by Mr. Peachy to Col. P. Della Torre, the U. S. district attorney, who stated to me in what points he wished to examine me, and told me at what hour to appear before the commissioner. Previous to leaving his office the maps were exhibited to me, which have since been referred to during my examination for the purpose of ascertaining the extent of my acquaintance with the subject.

CHAS. T. HEALY.

Sworn to and subscribed before me, this 7th day of July, A. D. 1858.

J. EDGAR GRIMES,
Special Commissioner.

Endorsed: Filed July 7th, 1858.

W. H. CHEVERS, *Clerk.*

Notice of Motion and Affidavit of H. Laurencel.

In the District Court of the United States for the northern district of California.

THE UNITED STATES vs. CHARLES FOSSATT. } No. 132, District Court. No. 340, Land Commission.

You will please take notice, that on Saturday the 7th day of August, inst., at the opening of the district court of the United States for the northern district of California, or as soon thereafter as counsel can be heard, I will move the said court to enter a final decree of confirmation in this case in accordance with the mandate and opinion of the Supreme Court of the United States herein, on the evidence on file and that taken since the filing of the mandate, and which may be taken before the hearing of this motion; or if such motion be denied, then that a day be appointed for entering such final decree.

The motion will be made on the mandate and opinion of the Supreme Court on file, the affidavit of Henry Laurencel, hereto annexed, and a copy of which is herewith served upon you, and the depositions of Jacob R. Snyder, Healey and Leander Ransom, taken since the filing of said mandate.

San Francisco, August 2d, 1858.

A. P. CRITTENDEN,
Att'y for Claimant.

To P. DELLA TORRE, Esq.,
U. S. District Attorney.

In the District Court of the United States for the northern district of California.

THE UNITED STATES vs. CHARLES FOSSAT. } No. 182, District Court. No. 340, Land Commission.

Henry Laurencel, being duly sworn, says, that he is the owner of one-half of the land claimed in this case, and the agent of James Eldredge, who owns the other half, deponent and said Eldredge holding all the title of Charles Fossat.

That on the 17th day of June, 1858, the mandate of the Supreme Court of the United States, together with a copy, duly certified, of the opinion of said Supreme Court therein referred to, was filed in this court by the claimant, and an application made to the court by the claimant's attorney to enter a final decree in this cause, in accordance with said mandate and opinion and upon the evidence on file.

That objection being made by P. Della Torre, Esq., attorney of the United States for said district, to the entry of such decree without a formal motion to that effect, made upon due notice to him, a

notice in writing was, on the 17th day of June, 1858, served on said district attorney, that on the 23d day of June, 1858, a motion would be made to this court to enter the final decree of confirmation in this cause in conformity to said mandate and opinion of said Supreme Court; and on said last-named day said motion was made, but said district attorney representing that he was not then prepared to say whether he should offer further evidence on behalf of the United States on the question of boundary, nor what evidence he should offer, if any, further time was allowed him by the court to the 30th day of June, 1858, to make a showing upon the subject, and the motion of the claimant was continued to that day.

That on the said 30th day of June, 1858, the said motion again came before the court, when the said district attorney represented that he wished to give further testimony in regard to the boundaries of the land claimed, and would examine three or four persons as witnesses on behalf of the United States on that subject, amongst whom were Antonio Maria Pico, Louis McLane, and Jacob R. Snyder, but did not set forth the facts intended to be proved by said witnesses; and thereupon, without disposing of the claimant's motion, further time was allowed to the district attorney to introduce evidence on behalf of the United States, but no time being specified within which such evidence should be given.

That on the 1st day of July, 1858, Jacob R. Snyder, one of the said witnesses named by the district attorney, was examined on behalf of the United States; and that since that time one C. T. Healey and one Leander Ransom have also been examined as witnesses for the United States, the examination of the former having been commenced on the 2d day of July, 1858, and concluded on the 7th day of July, 1858, and the examination of the latter having been commenced on the 12th day of July, 1858, and concluded on the 30th day of July, 1858; and that since the examination of the said Ransom was concluded no notice has been given, as deponent is informed and believes, of the examination of any other witnesses on behalf of the United States.

That it appears, from the testimony of the said Healey, that he was employed by the New Almaden Co., a company claiming part of the land claimed in this case, or by some of the agents of said company, to make an examination of said land, on the 26th day of June, 1858; and it appears, from the testimony of said Ransom, that he also made a similar examination about the 23d day of June, 1858, at the request of the attorney of said company; and the said witnesses have been introduced in the name of the United States to testify in regard to the results of such examination, and to express opinions founded thereon.

That he is advised by his counsel, and believes, that the testimony of said witnesses, Snyder, Healey, and Ransom, is immate-

rial, and can have no influence in determining any question to be passed upon by this court; and that, according to his information and belief, the said testimony has been procured by the agents or attorneys of the said Almaden Company, to promote the interests of said company by delaying the final confirmation of the claim of said Fossat.

That the said New Almaden Company is in possession of a large and valuable portion of the land claimed in this case, and is deriving therefrom a large revenue, as deponent is informed and believes, and has a direct interest in hindering and delaying the final confirmation to the claimant in this case; and that if such confirmation be delayed, at the instance of the agents or attorneys of said company, so long as further testimony can be procured of the same character as that given by said Healey and Ransom, such delay will be indefinite in extent and highly injurious and oppressive to the owners of the land claimed in this case.

H. LAURENCEL.

Sworn to and subscribed, August 2, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

Service acknowledged of a copy of the within notice and affidavit.

P. DELLA TORRE,
U. S. Att'y.

San Francisco, August 2d, 1858.

Endorsed: Filed August 3, 1858.

W. H. CHEVERS, *Clerk.*

Deposition of R. C. Matthewson.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSATT.

SAN FRANCISCO, *August 4th*, 1858.

On this day, before the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came R. C. Matthewson, a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, the district attorney and Mr. Peachy for the United States; Mr. Randolph for claimant.

Question by District Attorney.

My name is R. C. Matthewson. I reside in San Francisco; for the last four years have been engaged in United States public surveys. I was on the land claimed in this case last week; went there at Mr. Peachy's request. I have, since that, conversed with the district attorney. I examined certain maps and documents. I travelled around the country considerably during my visit to the land. (Map marked "A. P. C." shown to witness—Lewis' map.) The mountains delineated on this map, and marked from X to Y, are a part of a spur making out to the north from the main range of mountains. It is cut by the arroyo Seco on one side, and the arroyo de los Alamitos on the other, running in opposite directions, winding round the point of the spur until they join in the valley below. (Traced copy of the diseño shown witness.)

Question. State if the Sierra del Encino, on this diseño, is capable of being located by means of the other natural objects delineated thereon; and if it can be, state what are the other natural objects which determined its location, and what is the position of said sierra on the map shown you, marked "A. P. C."

Answer. I think it can be so located. Its location is determined by the arroyo Seco to the west, and the Alamitos to the east. These are the principal objects. Inferences might be drawn from the position of the house, &c. The position of the mountain marked X Y on the map, corresponds to the Sierra del Encino on the diseño.

Question. Have you made a sketch of that country, making an addition to the diseño of the country to the south of the land represented on the diseno? If so, produce it.

(Objected to on the ground that it is too late to amend or add to the diseño of Justo Larios.)

Answer. I have. (Witness produces the sketch marked R. C. M., and attached to deposition.) That part in black is a traced copy of the diseño; that part in red represents the portion of the mountains to the south.

Question. If you were called on to locate the land by the diseño of Justo Larios, where would you fix the southern boundary?

Answer. It is evidently at the foot of the first hills you come to on leaving the valley. Irrespective of quantity, I would draw a straight line from the point where the arroyo Seco terminates on the map—that is, where it leaves the mountains to where the arroyo de los Alamitos terminates, at the foot of the mountains. I would locate it in this way from the diseño alone. There may be conditions in the grant which would control the survey. This line would embrace a portion of the foot-hills. It would nearly coincide with the line "I J K" on Lewis' map. I think a straight

line, as described, would be sometimes to the north and sometimes to the south of that line. It would run on the northern slope, near the base of the mountain on which the mine is situated. It might be entirely at the base.

Question. In what mode did you make the reconnoissance of the country?

Answer. I went from the hotel to the mine; thence to the Portesuelo, between the headwaters of the arroyo Seco; I then followed the arroyo Seco down until it takes a turn and leaves the mountains, and thence to its junction with the arroyo de los Capitancillos. I then followed the Capitancillos to where the other arroyo Seco and the Alamitos join, and up the Alamitos to the hotel.

Cross-examined.

I speak very little Spanish; I never examined this county before my visit there last week; I was there two or three days; I staid at the house of Mr. Young, the superintendent of the mine. It is the Company's house. It is not kept as a hotel; I did not pay any bill; I have not received anything yet for making this examination; I don't know what I may receive. I generally charge for work of this kind, when I take instruments, $20 a day and expenses; but in a case of this kind, I don't know whether I ought to charge so much; that would be my medium charge.

Question. How much do you intend to charge for the job, expenses included?

Answer. Not over $89.

Question. To whom do you look for pay?

Answer. To Mr. Peachy.

Question. Is it permitted to deputy surveyors of the United States to render services like these, at the instance of third parties, for pay, to the prejudice of claimants against the United States?

Answer. I don't know of any rule governing deputy surveyors in a case like this. If any person were to offer to employ me to do any work, not acting officially, as deputy surveyor, I would conceive myself at liberty to take the money and do the work.

Question. Did you not know that the object of your employment was so to locate the boundaries of the Justo Larios rancho as to exclude the New Almaden mine, by whose attorney you were employed?

Answer. No; I suppose the object was to ascertain my opinion as to where it ought to be located.

Question. Did you not know that the object was to obtain from you such an opinion as would exclude that mine from the grant?

Answer. No; I was requested to go there and examine and see where I would locate the grant by that diseño.

Question. Did you not know that your employer wished and expected such an opinion?

Answer. He said nothing to me, except to go there and see what was the proper location of the grant.

Question. Did you ask of natives, or old inhabitants of the country, which mountain bore the name of Sierra del Encino?

Answer. I did not; I neither asked a native or any other person anything about it.

Question. Did you inquire of any one by what name the ridge marked X Y on Lewis's map was known at the date of the grant?

Answer. I did not.

Question. Did you ever read the grant in this case?

Answer. No; I believe I heard it read.

Question. When and where?

Answer. After my return I heard Mr. Peachy reading it.

Question. State more fully how you are enabled to locate the Sierra del Encino by the two arroyos referred to.

Answer. After leaving the Capitancillos, going towards the south, the first sierra you come to on the diseño is that called the Sierra del Encino, and the diseño shows that both the arroyo Seco and the arroyo de los Alamitos head to the south of the sierra marked Sierra del Encino. That ridge, therefore, corresponds with the ridge marked "X Y" on the map of Lewis.

Question. If what you call the main sierra is intended by the Sierra del Encino on this diseño, and if the main sierra is the southern boundary of the rancho, would there be any object in delineating the course of the two creeks running parallel with the base of the mountain?

Answer. I don't consider that there is a main sierra separate from any other portion of the sierra; it is merely a spur, and connected by a ridge with the main sierra. You can travel from the valley right up to the highest point of the ridge. I think there would be an object in delineating the creeks as supposed; it would show that the portion of the sierra delineated was not that next to the valley, but that to the south of the creeks.

Question. Are there any objects delineated on this diseño, except those intended to represent the external boundaries?

Answer. Yes; there is a house. The arroyo de los Capitancillos does not represent the boundary, for the "lindero of Berreyesa" is beyond it; neither does the arroyo Seco, according to the diseño, appear to be a boundary. The object of all these representations was to show the position, and fix the location, from all taken together.

Question. Are there not several small streams rising in the ridge "X Y," and flowing thence towards the plain, in the direction of the arroyo de los Capitancillos?

Answer. I don't think there is any well defined stream; there are gulches, no doubt, which in winter have water in them, but I saw no stream or well defined bed of any in the valley. I see on Lewis's map several small streams coming down from the ridge "X Y," and losing themselves in the plain.

Question. Are any of those small streams delineated on the diseño?

Answer. No, there are not.

Question. If the ridge "X Y" was intended by the Sierra del Encino on the diseño, would there not have been the same reason for delineating those small streams on the diseño as that given by you for delineating the course of the two arroyos at the foot of the main ridge, viz: to show that the southern boundary was the ridge next beyond those small streams?

Answer. I don't think so. Those small creeks are of very small importance, but this is not the case with large arroyos.

Question. Would not several small streams answer as well for the certain location of the ridge next beyond them as the two larger streams would answer to designate the ridge beyond them?

Answer. No; for the larger streams should always be selected.

Question. Is there not a range of hills on the western side nearly parallel with the arroyo Seco? Is there not also on the eastern side an isolated hill referred to in the grant; and is either delineated on the diseño?

Answer. There is such a range and such a hill, but neither is on the diseño.

Question. If the main ridge of the sierra was intended by the Sierra del Encino on this diseño, would there have been any more reason for delineating the mine ridge X Y, than for designating the western range and isolated hill?

Answer. I think so, because prominent objects should be selected in preference to minor ones. It would be better, certainly, if all the objects were delineated.

Question. Is there any object except the house delineated on the diseño between the arroyos Capitancillos and the Sierra del Encino marked as the southern boundary, whichever ridge that may be?

Answer. Between the arroyo de los Capitancillos and the Sierra del Encino there is no object but the house marked on the diseño.

Question. Is it not perfectly manifest, upon the inspection of the diseño, that it was very rudely drawn, and not intended to give the topography of that rancho, and that on the south nothing was intended except the southern boundary itself, without reference to hills in the valley, streams flowing at its foot, or running down its sides, to the plain? Is it not merely and simply an outline on that side?

Answer. The diseño is very imperfect in respect to topography.

The diseño is very roughly drawn. I think it was not intended to give the general topography of the ranch, but to give the prominent points by which the grant could be located. There is nothing laid down as the southern boundary, except the mountains called Sierra del Encino, and the termination of the arroyo Alamitos and arroyo Seco, at the base of the Sierra del Encino. I think it is an outline of the points which were intended to determine the locality of the grant.

Question. From a diseño such as this, so rudely drawn, totally omitting the topography of the country, and with simply the outline of a mountain as the southern boundary, is it not in the last degree preposterous to undertake the location of a rancho, and that without knowledge of the calls of the grant, and without putting yourself to the trouble to take information from competent persons in the neighborhood as to what were the objects intended by this rude sketch, and the words written upon it?

Answer. I did not go there to locate the grant at all; I merely went to see how I would locate it by the diseño alone, independently of all other papers.

Question. Why, then, knowing, as you must have known, that you would be called as a witness on a question so important as the boundaries of this rancho, did you not decline venturing to give an opinion founded on this diseño alone?

Answer. I was requested to see how I would locate the land by the diseño alone. If it cannot be located by the diseño alone, the testimony won't amount to anything. I considered I had a right to give my opinion as requested.

Question. As you attach so much importance to the points where the two arroyos delineated on the diseño appear to head in the mountains, how could you in protracting those streams lay down their course, as you have done in your sketch, directly over the hills?

Answer. I drew this sketch to show the country as it is in reality, and to indicate the course of the streams in the country lying south of that I supposed to be included in the diseño.

Question. Is it not plain that the delineation of those streams cannot be taken fairly to represent the face of the country, when in extending them you are obliged to make them run over the hill?

Answer. The hills are delineated in elevation, and the streams do not run over the hills. The hills conceal the opening through which the streams pass.

Question. When you are on the ground, and look up the arroyo Seco, do you not see the main ridge of the sierra just about the place where the arroyo Seco is represented as heading, and is there not a plain view of that part of the main ridge of the sierra where

you say the hills in elevation conceal the opening through which the stream passes?

Answer. I can see the main ridge, but far beyond the place where the arroyo is represented on the diseño as heading.

Question. When you were upon the ground did you have with you the diseño of Berreyesa?

Answer. I did.

Question. Look at this traced copy of that diseño, and say how you would run the western boundary of the rancho of Berreyesa, represented by the dotted line; where would you begin, by what hill would you pass, over what ridge would you cross; what stream would you then pass, and at what ridge would you terminate that line?

Answer. I would commence at the junction of the Alamitos and Seco, pass by the eastern base of the hill called "Lomita," cross the Lomas Bajas, then the arroyo Alamitos, to a point near the base of the sierra Azul.

Question. If that western line of Berreyesa was also the eastern boundary of Justo Larios, would you not terminate the latter at the same point in the sierra Azul, having first crossed the arroyo Alamitos?

Answer. I would without any other conditions. I could not locate a grant by one line.

Question. If the eastern boundary of Justo Larios commences at a certain point, and is continued southwardly until it reaches a certain point, would not the place of its termination be a point on the southern boundary of the rancho?

Answer. It would, if the grant was consistent with itself in all its parts.

Question. Would it not, if the rancho was included between eastern and southern, northern and western lines, which intersected, respectively?

Answer. Yes, if the conditions were not inconsistent.

Question. What do you mean by inconsistent conditions?

Answer. I understand lines that will not close by running round the rancho.

Question. Do you know anything that will prevent the lines of Justo Larios' rancho from closing?

Answer. I know nothing about the rancho; I only know the diseño.

Direct resumed.

Question. Would there be any difficulty in finding the places where the arroyos laid down on the diseño debouch from the mountains, or in finding the northern base of the mountains marked X Y on the map "A. P. C?"

Answer. There would not within narrow limits. There might

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be a difference of opinion as to the exact location, but as a general thing there would be no difficulty.

Question. Standing on the ground, and looking up at the place where the Capitancillos, on the diseño of Justo Larios, debouches from the mountain, is or is not the view of the mountain beyond the mine cut off?

Answer. I don't know what the appearance is; I presume a portion of it is concealed; but I did not look particularly from that point.

Question. Is there anything on the diseño of Larios to indicate that the southern line would traverse the mountain more than one thousand feet higher than the points where the arroyo Seco and Capitancillos debouch from the mountains?

Answer. There is no indication of a peak higher than the others on this diseño; the range runs along pretty regularly.

R. C. MATTHEWSON.

Taken and subscribed in open court, this 4th August, 1858.

OGDEN HOFFMAN,
District Judge.

Endorsed: Filed August 4th, 1858.

W. H. CHEVERS,
Clerk.

[*Here follows plat; see original, page* 67.]

Deposition of Leander Ransom.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSATT.

SAN FRANCISCO, *July* 12, 1858.

On this day, before Cutler McAllister, a commissioner of the United States for the district of California, duly authorized to administer oaths, etc., etc., came Leander Ransom, esq., a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 366 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, U. S. district attorney and A. C. Peachy, esq., for the government; and Edmund Randolph, esq., for claimant.

Questions by United States District Attorney.

Question 1. What is your name, age, and place of residence?

Answer. My name is Leander Ransom; fifty years old; and I reside in San Francisco, California.

Question 2. What is your profession, and what public office have you held in California?

Answer. I am a civil engineer; I have been chief clerk for seven years in the U. S. surveyor general's office.

Question 3. Are you acquainted with the land claimed in this case, and the adjacent country? if yea, state the extent of your knowledge, and how and when it was obtained.

Answer. My first knowledge of the country is, that I visited the New Almaden mines in 1852; and about two weeks since, I visited that country and passed around and over the land claimed in this case, in various directions.

Question 4. Look at the map of the survey in this case, marked "A. P. C.," (Lewis's survey), and state how you regard the mountains thereon delineated as extending from "X to Y" in reference to the general range lying to the south of the cañada de los Capitancillos.

(Objected to by claimant's counsel because it asks the opinion of the witness, which is not evidence in this case.)

Answer. I consider a portion of the general range of mountains lying to the south of the cañada.

Question 5. State if the Sierra del Encino on the diseño of Justo Larios is capable of being located by means of the other natural objects delineated thereon; and if, in your opinion, it can be, state what are the other natural objects which determine its locality, and what is the position of said sierra on the map of Lewis's survey, marked "A. P. C."

Answer. From the position of the streams as marked on the diseño, I should have no difficulty in designating the mountains marked on the diseño Sierra del Encino. From the position of the streams, I should think that part of the country marked "X Y" is the same as the Sierra del Encino.

Question 6. Describe minutely the examination you made of this land when you were last on it.

Answer. I entered upon the land at the forks of the creek marked on the diseño as the arroyo Seco and arroyo de los Capitancillos; passed along the road towards the Almaden mines; thence up the creek to the hacienda; thence to the mines of Almaden; thence to the headwaters of those streams marked on the diseño. From the mines I passed to that portion of the mountains where the said streams flow in opposite directions. I had no means of ascertaining the elevation; I had this map, or a copy of Lewis's map, before me; to the best of my judgment the elevations as marked on the map were approximately correct. From that place we followed down the depression to the arroyo Seco, and following down the arroyo Seco to the place I first entered on the tract.

Question 7. Regarding the Sierra del Encino as being the same as the mountains extending from "X" to "Y," state whether this diseño of Larios is a correct representation of the country it pretends to delineate,

Answer. I do not consider it a perfect delineation, because none of those maps made without a survey are correct. I consider it a very fair delineation of the country, as far as it goes. Not one map in twenty in the old archives gives as good an idea of the country as this does. I regard the map from the forks of the two streams, arroyo Seco and arroyo de los Capitancillos, for several miles up each creek, as a very fair representation of the country.

Question 8. Following up the arroyo Seco and the arroyo de los Alamitos from the points where they cease to be delineated on the diseño, what direction do the streams take? make the description with reference to the diseño.

Answer. The diseño shows better for itself—better than I can describe it. If I am asked if the streams on the map were extended into the mountains, what would be the direction of them, I should say the headwaters of each are very near to each other, and they pass in different directions, forming each one an elbow before they join the streams marked on the diseño. From the point "O," on Lewis's map, down to a little below Station 100, there is a depression, but no water when I was there. The water appears to come from the branch marked on Lewis's map as coming from the direction of Mount Umunhum, joining the said depression or slight ravine at Station 101.

Cross-examination.

Question 1. Are you at this time still chief clerk in the surveyor's general's office? and if not, when did you cease to be?

Answer. I am not at this time; I ceased about two months since.

Question 2. What is your present occupation?

Answer. General land agent.

Question 3. What is the nature of the business of your general land agency?

Answer. Any legitimate business appertaining to land titles and land surveys.

Question 4. Is the location of grants or ascertainment of boundaries within the scope of your business of general land agent?

Answer. It is.

Question 5. In what manner do you make your information, skill and experience useful in the location of grants or ascertainment of boundaries?

Answer. From the information I received as chief clerk, from my knowledge of titles, obtained from their examination in the old archives.

Question 6. As the location of grants and ascertainment of boundaries is a subject of adjudication by the courts, and afterwards for corresponding surveys, by the surveyor general, or his deputies, in what manner is it in your power to determine a location, or fix a boundary?

Answer. I do not pretend finally to fix a boundary, but, by examination of documents and evidence, to determine in my own mind what ought to be the boundary, when the matter comes before the surveyor general, to give him my reasons for such an opinion.

Question 7. Did you render these services on the application of parties interested, and for fees, and is it a means of your livelihood?

Answer. I have rendered those services on application, and it is a means of my livelihood.

Question 8. Then your general land agency is a profession something like the law, in which you are paid as counsel on the one side or the other, in questions of locations and boundaries?

Answer. As a general thing I expect to be paid, but not in every instance.

Question 9. How many visits in all have you ever made to this New Almaden mine?

Answer. Two.

Question 10. At whose instance and request did you make the first visit in 1852?

Answer. I was not requested by any one; I went on a pleasure excursion for the purpose of seeing the mines.

Question 11. Did you go in the company of any one of those now possessing and claiming to own that mine, or of any of their servants or employees?

Answer. I do not recollect of any person being present; I do not recollect who owned it at the time.

Question 12. At whose instance and request, and in whose company did you visit the mines and examine the country adjacent, about two weeks since?

Answer. I went at the request of Mr. Peachy, who is now present, but not in his company. He intended to go, but did not. On the boat I was introduced to Mr. Barron. He is the only one who is interested in the mines who went along with me.

Question 13. Is this Mr. Barron one of those persons who are known as the New Almaden Company, or their agents?

Answer. He was introduced to me as one of the firm of Bolton, Barron & Co., and from his conversation I should think he was interested, or was one of the agents.

Question 14. Now answer at whose request, and in whose company, you examined the country adjacent to the mine.

Answer. Mr. Barron was along, and two or three agents that

they have, Mr. Young, Day, and Capt. Naglee, accompanied me from the hacienda; there was no request made to me after I left here; it was generally understood I was to examine the country.

Question 15. Did Barron and the agents accompany you to the divide where the two arroyos flow in opposite directions; did they produce Lewis's map for your inspection, and call your attention to the elevations marked upon it, and to the natural objects which serve to show the relation of the ridge "X Y" on Lewis's map, to the main sierra?

Answer. Mr. Barron, Day, and Young accompanied me, with others, Capt. Naglee; and we had with us a copy of this map furnished by them; examined it on different points, and had a general talk of the country around. We also had a copy of the diseño.

Question 16. Did you discuss with those persons what were the objects intended to be delineated on the diseño; for example, whether the ridge "X Y" on Lewis's map, or the main sierra, was delineated on the diseño as a southern boundary of the rancho, and thereon inscribed Sierra del Encino?

Answer. The object of the visit was to ascertain points and positions of the country; we had a free conversation. I asked them about certain points, but did not give them my opinion.

Question 17. Did you discuss with those persons the question, whether the two arroyos delineated on the diseño were represented as rising in the main sierra, or as passing by the ridge "X Y?"

Answer. We had a general conversation, but was not specific about this.

Question 18. Was the manner of the delineation of those two streams cited in your conversation as evidence that the Sierra del Encino marked on the diseño was intended for the ridge X Y, on Lewis's map?

Answer. The diseño and the map were compared, and as to the directions of the streams; no opinion was asked of me as to the mountain. The conversation in general was as to points and different positions, so that I could understand the country.

Question 9. Did you not understand the object of the examination and conference to be the ascertainment of the location and boundaries of the Justo Larios grant in such manner as not to include the New Almaden mine within the limits of that grant?

Answer. I do not know what their object was, any further than this—they wanted me to examine certain points, so as to give my opinion as to the proper location of the grant; but I was aware that they desired the mines to be left out.

Question 10. Have you any, even the slightest, doubt that the object of carrying you down to the New Almaden mine, taking you across and round the land claimed in this case, reconnoitring

the country and examining maps, was all with a view to your appearance here as a witness to testify as to the location and boundaries of the rancho of Justo Larios, to the end that they might be so determined as not to include the New Almaden mine?

Answer. I was not told direct that I would be called as a witness, but it was intimated that I might be so called to testify.

Question 11. Were not all the points raised upon your direct examination, as going to show that the grant in this case would not include the New Almaden mine spoken of, and considered in the conference between yourself, a proprietor and agent of the mine, and other persons, on the occasion that you have first testified; in a word, has not your testimony this day corresponded precisely with the opinion of the interested parties with whom you conferred upon the ground?

Answer. I heard very few opinions about it; I formed my own opinions as to the different points and locations.

Question 12. When the conspicuous objects of the surrounding country were being pointed out to you, was your attention called especially to a certain live-oak tree, or enciño, standing alone and very prominent on a slope of the main sierra?

Answer. An oak tree, said to be the one, was pointed out to me, perhaps at my request, as the tree about which so much had been said.

Question 13. Give some description of the appearance of the tree; what sort of an object does it make?

Answer. The tree pointed out to me was not a large tree, but appeared standing by itself; from the distance from which I viewed it, I did not see any peculiarity about it.

Question 14. I understood you to say, then, that the tree in question was not one of the most notable and conspicuous objects which strike the eye upon a general survey of the slopes of the main sierra?

Answer. I do not say that; I say it was not a large tree, but it was a tree standing by itself; there were other larger trees on the other sierras, but they were not alone by themselves. I must acknowledge that I was disappointed in its appearance.

Question 15. How long did you remain at or in the neighborhood of the New Almaden mine? Where were you lodged? At whose expense was that journey made?

Answer. I paid my own expenses as far as San José. I rode from Alviso in company with Mr. Barron to the mines. We arrived there about sundown of the same day that we left there. We stopped at a large house which I was told belonged to the Almaden Company. I spent the next day from six in the morning to four in the afternoon in travelling over the country and examining the different objects. The next day I returned to this city in company with Mr. Barron, and, I presume, at his expense.

Question 16. Did you render all this service of visiting the mine, riding over the country, studying its appearance, noting conspicuous natural objects, &c., entirely gratuitously?

Answer. I had two objects in making the visit—one to see the mines and the country, and to obtain a little recreation or out-door exercise; the other to accommodate a friend. I have not received anything for my services; have not been promised anything, and do not expect anything beyond my expenses.

Question 17. Was the friend whom you wished to oblige interested in, or employed by, the New Almaden Company? What was his name?

Answer. Mr. Peachy, who is here present, and who represents the New Almaden Company.

Question 18. How long is it since you entertained the opinion which you have expressed in your testimony concerning the location and boundaries of this grant of Justo Larios, and particularly as to the ridge "X Y" being the southern boundary delineated on the diseño, and there inscribed Sierra del Encino?

Answer. Since my recent trip.

Question 19. Had you not conceived and expressed some opinion on the subject before your recent visit to the mine?

Answer. I may have expressed some opinion on the matter, after having seen some map of the country and compared it with the papers, about a year or a year and a half ago, but I formed no definite opinion until this recent visit.

Question 20. Were not your impressions then just what your opinions are now?

Answer. My opinions have not been changed, but have been strengthened.

Question 21. Was not the map shown you a year or a year and a half ago Lewis's map in this case, the one now before you?

Answer. The first map I saw was La Croze's map, marked Exhibit "J. M.," from which examination I formed a partial, not a full opinion, of the case. Subsequently, I saw a copy of the map of Lewis's survey.

Question 22. The time which you refer, or before, was your attention called to the location and boundary of this grant, and were explanations of the papers of the grant and general features of the country by parties in interest or by their counsel?

Answer. The first time that I recollect anything about this claim or this map was the time that this map of La Croze was returned to the surveyor general's office. I looked into the matter at the time at the request of no particular person, except Col. Hays. I do not recollect, at that time, that any one interested spoke to me, but subsequently I have had conversation about it with persons who I supposed were interested parties. Whilst this map was in the office under consideration, and before it was con-

firmed or approved by Col. Hays, I had very little conversation about it, it being a matter which Col. Hays took under his own consideration.

Question 23. Do you mean that neither before this map was returned to the office, nor during the time when it was in the office under consideration, you had discussed the location and boundaries of the Justo Larios grant with parties interested in or for the New Almaden mine?

Answer. I mean to say, that the time this map was returned I had a conversation with Col. Hays about the location; but, as he took it under his special charge, I paid but very little attention to it, and refrained from saying much to any one on the subject. Generally, I have had a good deal to do in the location of grants; but about this one, I have had nothing to do with it.

Question 24. Have you, or not, during the time when you were employed in the surveyor's office, fully and often discussed the subject of this location with persons in the interest of the New Almaden mine; and if so, when? Please answer fully.

Answer. I recollect, in a few instances, of having conversations with persons about the location of this grant, but I never knew if they were interested or not. I have had perhaps more conversation with Mr. Halleck about it. I do not recollect of any one else who was particularly interested, except recently I have spoken to Mr. Peachy about it.

Question 25. In the conversations or discussion with Mr. Halleck, and the other persons to whom you allude, was not Lewis's map exhibited and explained to you?

Answer. I had seen the map once or twice before I went up; but I do not recollect of any explanation being given to me. I recollect at one time comparing La Croze's map with Lewis's map, to see how the lines agreed.

Question 26. Was that at the time when La Croze's map was under consideration in the surveyor general's office; if not, when was it? By whom was Lewis's map brought to your notice?

Answer. It was some time after that La Croze's map was accepted that I saw a copy of this map, (Lewis's map.) Being in the draughting room, I went and compared them only as a matter of curiosity to myself.

Question 27. When you discussed the subject of the location of this grant, did you not have Lewis's map before you?

Answer. I have never had anything particular to say about the matter. The map may have been present, as I have answered before.

Question 28. As this map of Lewis's is a private affair, no way belonging to the surveyor's office, do you know how it was that it became to be in the draughting room?

Answer. It was brought in there to have a traced copy of a part

of it made for some person. I took it up on my own accord, happening to see it there, and compared them together to satisfy my own curiosity.

Question 29. It was only from such slight sources as these you have mentioned that you derived the impressions which were lately sa fully confirmed by your visit to the New Almaden mine?

Answer. From the observations I had taken from time to time, and from these sources.

Question 30. What other observations do you mean that you had taken besides those which you have testified?

Answer. From the general observation I have made from the time the survey was being made, the return of the survey and its final acceptation by the surveyor general, and the observation I had with several persons from time to time.

Question 31. What year did you come to California, and from what place? Where had you lived before?

Answer. I came to California in June, 1851, from New York. I had lived in Cleveland and Columbus, in Ohio, and on Lake Superior.

Question 32. Do you speak the Spanish language so as to be able to converse in it?

Answer. I understand some words of the language, but I do not pretend to converse in it.

Question 33. Look at the diseño of Berreyesa, that of Justo Larios, and say what object upon the diseño of Justo Larios corresponds with the range on the diseño of Berreyesa, marked Lomas Bajas, and first say what is the meaning of those words, Lomas Bajas?

Answer. I understand lomas bajas to mean low hills. I do not see any thing to correspond. Berreyesa's diseño is not a perfect delineation of the country. There is not a valley above the elbow of the Alamito creek. Those hills, of 1,700 to 1,800 feet high, ought not to be called low hills. What is called Lomas Bajas on Berreyesa's diseño may have been intended to be represented as the Sierra del Encino on Larios's diseño.

Question 34. Upon that supposition, what is there on the diseño of Justo Larios to correspond with the Sierra Azul on the diseño of Berreyesa?

Answer. On Justo Larios's diseño, in the form of mountain ranges, there is no correspondence with that of the other.

Examination adjourned until to-morrow, July 13th, 1858, at 12 o'clock, m.

SAN FRANCISCO, *July* 30, 1858.

Cross-examination of Leander Ransom, this day continued.

Present, U. S. attorney; A. P. Crittenden, for claimant.

Question 35. What hills are those which are designated as Lo-

mas Bajas on the diseño of Berreyesa, on the west of the arroyo los Alamitos?

Answer. 35. I suppose they are intended to represent the foot-hills, or the first hills that you arrive at from the valley.

Question 36. On that diseño, where would be situated the hacienda of the Almaden mine?

Answer 36. From this sketch, it would be very difficult to determine it; it is not a fair representation of the country. I suppose from the map, that it would be somewhere near the bend of the arroyo, opposite the eastern end of the Lomas Bajas, before referred to.

Question 37. Is there on the ground any range of hills which could possibly be intended to be represented by the range marked Lomas Bajas, except the range in which the Almaden mine is situated?

Answer 37. I should think the mine was situated in the Lomas Bajas before referred to. I should judge so from the course of the arroyo, but on the ground there is no valley such as is represented on the diseño, between the Lomas Bajas and the Sierra Azul, but merely a ravine.

Question 38. Looking at the diseño of Berreyesa, and taking the dotted line marked lindero as his western boundary, in connection with the call for that line in the grant of Berreyesa, is it not clear that Berreyesa's western line, starting from the junction of the arroyo Seco and the arroyo de los Alamitos, crosses the hills in which the Almaden mine is situated, and is prolonged until it strikes the main sierra, the words of the grant being translated thus: "For boundary, the angle formed by the arroyo Seco, and that of the Alamitos southward, the eastern falda de la loma, situated in the centre of the cañada, until reaching the sierra?"

(Question objected to, as assuming as facts, things not proven or admitted.)

Answer 38. In my opinion, the mountain on the north side of the creek, in which the mine is situated, is a portion of the sierra; the dotted line appears on the map to extend to the south side of the creek.

(Answer objected to, as not responsive to the question, and question repeated.)

Under the circumstances, I should run the line to the creek which heads in the mountains, as represented on the diseño.

Question 39. Do you know, as a matter of fact, where a place called El Encino is?

Answer 39. When I was on the ground, there was a place pointed out to me as being called "El Encino;" I only know from that.

Question 40. Do you know whether or not the range of hills

in which the Almaden and Guadalupe mines are situated, has had always amongst the people of the country a name of its own, by which it is distinguished from the sierra?

Answer 40. It is a matter I know nothing about.

Question 41. Have you any knowledge of the names and designation of natural objects in that vicinity, except what you derived from the persons who were with you when you last visited it, and from the maps which you may have examined?

Answer 41. I do not know that I have.

Question 42. When you made your examination of this country, had you any other papers before you than the diseño of Justo Larios, and the copy of Lewis's map?

Answer 42. I had in addition to those mentioned, a copy of Berreyesa's diseño.

Question 43. Is not the range of hills in which the Almaden and Guadalupe mines are situated, separated along almost its whole length from the main sierra by the two streams, and by the ravines and gorges, the heads of those streams?

Answer 43. There are deep ravines, through which the streams pass each way from a lower place in the mountain, and the streams branch and run down each way. The centre portion of the mountain is connected, but is lower than either ridge. The greater portion of the ridge in which the mines are situated is divided from the rest of the sierra by the ravines through which the streams run.

LEANDER RANSOM.

Subscribed and sworn to before me, this 30th July, 1858.

CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed August 7th, 1858.

W. H. CHEVERS, *Clerk.*

Order to close proofs on 21st inst., and to set hearing on 24th inst.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the ninth day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. CHARLES FOSSAT. } No. 132.

On motion of the claimant by his attorney, made in due notice, it is ordered by the court, the United States, by the district attor-

ney, assenting thereto, that the testimony on both sides be closed on Saturday, the 21st of August next, and the cause be set for hearing on Tuesday, the 24th day of August inst., at 11 o'clock a. m.

Endorsed: Filed August 9th, 1858.

W. H. CHEVERS, *Clerk.*

Statement of U. S. Attorney.

U. S. District Court.

THE UNITED STATES vs. CHARLES FOSSAT. } No. 132.

The claimant, Henry Lawrencel, having given notice of a motion for the entry of a final decree of confirmation based upon his own affidavit, the United States attorney makes the following statement in reply and explanation. Although much that is contained herein is already within the knowledge of the court, yet it is inserted in order that the whole of the facts may appear in the same record with the affidavit of the claimant complaining of the United States.

It may be necessary to premise that various claims have been set up to a portion of this tract for which claimant desires a decree of confirmation. The true object of the litigation is that ridge of mountains lying to the southward of the claim, and in which are situated several mines of quicksilver of great value. For the lands and mineral located in that ridge there have been filed in this court sundry claims under three different rights, viz: under Justo Larios, under José R. Berreyesa, and under Andres Castillero. Each of the parties set up an exclusive right to the property, and expects that the others have no interest in the matter. In the view of the subscriber none of the parties have any rights whatever in the premises, and their claims are all invalid; the property both in the lands and minerals in said ridge being vested in the United States, and in no other person or body politic. Representing the interest of the government, he is bound to oppose the confirmation of each and all of the claims, no matter who may deem themselves interested in their confirmation or rejection. With regard to the conflicting rights of parties among themselves, the U. S. attorney has no concern, as no interest of the government is therein involved, and the rival claimants must settle their differences in some other form.

But inasmuch as each claimant in turn sets up a claim adverse to the U. S., their att'y finds himself alternately opposed to each claimant as the respective cases arise. In these, as in the numerous other land cases, he can obtain parol testimony in support of the rights of the U. S. only by inquiry from persons whom cir-

cumstances have rendered familiar with the history and location of the divers claims which are urged in this court. Since this case has been remanded by the Supreme Court he has availed himself of all the information he could procure which he deemed pertinent to the question in issue. His object has been to defeat, if possible, all the claims set up to the lands and mines alluded to, and to that end to introduce the evidence coming to his knowledge which he deems to have a bearing on the point. It will be the duty of the court at the proper time to decide upon the respective rights of the United States and the claimants. In each of these cases the evidence already adduced and that which it is proposed to introduce is, in his judgment, material to the interests of the United States, and he declines accepting any other arbitrament of its force and effect than the decision of the court when the case shall have been argued. He very cheerfully acknowledges his obligations to the affiant, Mr. Laurencel, for the information and assistance given the United States in resisting the claim of those alleging rights under Andres Castillero. It was through the efforts of that gentleman principally that testimony, parol and documentary, was obtained from Mr. J. A. Forbes, which otherwise might never have come to the possession, or even knowledge, of any of the officers of the United States, and which has been put in evidence on the part of the government at different times since November last.

With regard to that portion of the affidavit relating to the proceedings in this cause since the return of the mandate of the Supreme Court, the U. S. att'y asks to make the following statement:

The mandate and opinion of the Supreme Court were filed on the 17th of June last, and an application was made at the same time to enter a final decree which had been prepared by claimant, and which for the first time had been submitted to the U. S. att'y the day before. Objection was made by the U. S. att'y to this proceeding, and he was then served with a notice that the motion would be renewed on the 23d of June. He had already informed the court that arrangements had been made on his part to leave the city in a day or two, for an absence of some ten days, on public business of the U. S., which it was deemed of consequence should be attended to by himself in person. In consequence of the notice, however, he was obliged to abandon this intention and make other arrangements for the business. Before the 23d of June, he was requested by Mr. Laurencel to visit the ground, to make inspection of the land and boundaries in dispute. To this proposal he readily assented, and accordingly on the 22d June he left the city in company with Mr. Laurencel, and on the 23d, with him and several other persons who had been invited by Mr. Laurencel, rode over the land, or so much of it as was deemed requisite to give him an in-

spection of the land-marks and general features of the adjacent country.

On the morning of the 25th they returned together to the city, and in the course of the day the U. S. att'y was informed that the motion to enter the decree of the claimant would be made the next day. On the 26th the motion was made, and was objected to on the part of the U. S., and was argued before this court. It was urged by the claimant that it was the duty of the court to enter a decree instanter on the presentation of the mandate of the Supreme Court, and that no time was to be allowed the U. S. att'y either for an examination of the questions or to procure further evidence. On the other hand, it was argued on behalf of the U. S. that the Supreme Court had remitted the case for the performance by this court of a judicial and not a purely ministerial act, and that the U. S. and claimant, one or both, were at liberty, under the opinion, to introduce further testimony for the information of the court. Had the Supreme Court been entirely content with the evidence in the record before them, or had supposed it entirely exhausted, it could have declared the external boundaries as well as this court, and need not have remitted it for a decision here. The very fact of referring this point to be decided upon the evidence "on file, and such other evidence as may be produced before it," shows that it is a judicial and not an administrative function which is to be performed, and that it was supposed there might be other evidence to render the final decree more satisfactory. And the U. S. att'y claimed the right to investigate the question, and see if there was further evidence which could be adduced upon the point remanded to this court.

The U. S. att'y understood the court to agree to this view of the question. He admits that if the Supreme Court had directed the entry of a specific decree, or required any other mentioned act to be performed, that it would have been the duty of court and counsel to render a ready obedience to the direction, and to have promptly assented to the entry of such decree, or the performance of such act. But he still thinks the reference of the Supreme Court was to the judgment of the court, and that consequently it was a matter for examination, evidence, and argument.

In giving its opinion on the 26th June, the court required of the district attorney to make a showing on the 30th of June as to whether he would be able to produce further testimony; it was considered by the U. S. att'y as a very short time in connection with the other duties of his office; but at the appointed day he made a further showing to the court, and, after argument on both sides, the court made the following order, to wit:

"Stated Term, June 30, 1858.

THE UNITED STATES
v.
CHARLES FOSSAT. } No. 132.

Ordered that the above case be referred to Richard Tobin, esq., as special comm'r to take testimony and report the same to this court without delay, and leave is given to either side to move to set this cause for a hearing in default of due diligence on the part of the other in taking and closing the testimony."

That on the 1st of July the deposition of J. R. Snyder was taken before Comm'r Tobin, and completed on that day. On the 2d of July the examination of Healy, county surveyor of Santa Clara county, in which the land was situated, was begun before Comm'r Grymes, it being found impracticable to proceed before the special comm'r, Tobin, in consequence of his other engagements, and by mutual consent the depositions were to proceed before any U. S. comm'r whose services could be secured. The examination on this day was adjourned in consequence of an objection taken by claimant's counsel, upon which the opinion of the court was required. On the succeeding day, Saturday, July 3d, the point was argued before the court, and was decided, as the U. S. att'y understands, in favor of the U. S., and the examination was then resumed, the direct closed, and the cross-examination by claimants commenced, and while pending it was adjourned to Tuesday, July 6th, being the first business day thereafter. Being then resumed, it was after a while, in consequence of other engagements of Mr. Crittenden and the illness of Mr. Randolph, (both for claimants,) adjourned over until the next day, July 7th, when it was resumed and closed. On the next day, July 8th, the U. S. att'y was in readiness with his witness, Leander Ransom, to proceed with his examination, but was informed that Mr. Randolph was too ill to attend that day, and that Mr. Crittenden's other engagements required his presence elsewhere, and by request of claimant it was postponed until Monday, July 12.

On the morning of the 12 July, Mr. Laurencel handed the U. S. att'y the copy of a letter from Alex'r Forbes, esq., to Jas. Alexan'r Forbes, dated , which the U. S. att'y has since learned was given by Mr. J. A. Forbes to Mr. Laurencel for the purpose of being handed to the law officer of the U. S. It was deemed of great importance to put the said copy letter in evidence in the case of the U. S. v. Andres Castillero, for the New Almaden mine, as promptly as possible, and from certain information furnished the dist. att'y at the same time by Mr. Laurencel, it was decided to examine Jas. Alex'r Forbes, of Santa Clara, and Robert Bernie, of Oakland, as soon as their presence before a comm'r could be secured. Subpœnas returnable in very

short time were accordingly prepared and placed in the hands of a deputy U. S. marshal, who, accompanied by Mr. Laurencel, left the city in the course of the morning to secure the attendance of the above named witnesses. On the same day the examination of Leander Ransom commenced.

On Wednesday, the 14th, Mr. Laurencel returned to the city with the witnesses above named, and for reasons which were satisfactory to the U. S. att'y, and after conference with the said Laurencel and his attorney, Mr. E. Randolph, the U. S. att'y moved before his honor, Judge McAllister, for an order to examine the said witnesses upon one hour's notice to the opposite party, which order was granted, and the deposition commenced.

The same day had been fixed for the examination of Don Pablo de la Guerra, a witness in behalf of the U. S. in the Limantour cases. He had come to San Francisco from Santa Barbara for this examination, and had informed the U. S. att'y, that in consequence of illness in his family, he would remain in this city only until the departure of the next steamer for Santa Barbara, which was to be on Sunday, the 18th July, and that his examination must be concluded within that time. The court is aware that the U. S. was under an order of this court to close their testimony in the Limantour cases within a given time, and the U. S. att'y deemed the testimony of Mr. De la Guerra of so much consequence to the U. S., that in the absence of the district judge from the city, he waited upon his honor Judge McAllister, and insisted upon his leaving his sick room to preside at the examination in person. It being physically impossible to conduct at the same time the examination of two witnesses in two different places, the examination of Robert Birnie and James A. Forbes was principally conducted on the part of the U. S. by Edmund Randolph, esq., who has been requested by the U. S. att'y to act as assistant counsel for the U. S. in the case vs. A. Castillero, and those claiming the New Almaden mine under him, and who, as far as the U. S. att'y has any authority for that purpose, has been retained for the U. S. in that case, and to this course he has been several times urged by said Laurencel. The examination of de la Guerra was finally closed on Saturday, the 17th July, and during its pendency it required the entire attention of the U. S. att'y. The court is aware of the magnitude and importance of that case, involving the title to lands upon which are situated government works and buildings of immense value to the U. S. From the extent of interest and the vast quantity of testimony in the case, the U. S. att'y does not deem it unreasonable that he should have demanded permission to give, as far as possible, uninterrupted attention to this case up to the time fixed by the court for its final close.

The testimony of Birnie and Forbes continued until Saturday,

July 31, being attended all the time by Mr. Randolph in person. On Wednesday, the 28th July, and while the examination of Mr. Forbes was proceeding, Mr. Laurencel called at the office of the U. S. att'y, and insisted upon proceeding with the examination of Col. Ransom. The U. S. att'y reminded Mr. Laurencel that it had been suspended to allow his att'y, Mr. Randolph, to attend on the part of the U. S. the examination of Mr. Forbes; that the U. S. had closed the direct examination of Col. Ransom, and it rested with him, Mr. L., to fix the time when the witness should be recalled for cross-examination. After some conversation, he said he would send Mr. Crittenden to the U. S. att'y the next day. He was then informed that the U. S. att'y would, as usual, be at his office until a late hour that afternoon, and it was suggested that Mr. Crittenden had better call that day instead of the next. Accordingly, that afternoon, about 5 o'clock, Mr. C. called, and the U. S. att'y proposed to continue Col. Ransom's examination the next morning. Mr. C. remarked, that for some days he had been engaged in trying a heavy equity suit, and office matters had accumulated, which would require the next day to dispose of, and suggested Friday, July 30th, for the examination; this was assented to, and on that day the cross-examination proceeded.

On Saturday, July 31st, as the court is aware, the deposition of Jacob P. Leese was taken on the part of the U. S. in the Limantour cases, in open court, and was continued until Monday, Aug. 2d. On that morning the U. S. att'y had it upon his notes as business to be attended to that day, a notice to the claimants in this case for the examination of R. C. Mathieson on the part of the U. S. on Wednesday, August 4th, Tuesday the 3d having been already assigned for the examination of George A. Fairfield in the Limantour cases, a witness on the part of the U. S. who was to leave for the Atlantic States on the steamer of the 5th of August.

On Monday, the 2d Aug., the examination of Jacob P. Leese was resumed at the opening of the court, and lasted until about 4 p. m., immediately after which the U. S. att'y had the proper notice for the testimony of R. C. Mathieson prepared and served upon claimant's attorneys. Whilst actually engaged in the examination of Mr. Leese, the claimant Laurencel served upon the U. S. att'y the notice of the motion this day to be argued before the court. In pursuance of the notice given on Wednesday, Aug. 4th, the testimony of R. C. Mathieson was taken in open court, and the court is aware, in the two succeeding days, further testimony was taken in open court in the Limantour cases.

The U. S. att'y further shows, that the testimony which he has produced and intends to produce is, in his judgment, material to the point to be decided by this court, and that it bears directly upon the question between the U. S. and the claimants in this

case; that as to the dispute between the affiant Laurencel and the New Almaden Company, the U. S. att'y cares nothing about it, and deems it improperly introduced in this case. As already said, it is contended by the U. S. that neither of the parties claiming have any just right to the premises; and so the different cases will be conducted, and so it will be argued in each case as it is successively called to a hearing.

The U. S. att'y utterly and absolutely denies that any testimony has been introduced, or is proposed to be introduced, on the part of the U. S., either to promote the interests of any person or persons whomsoever, or to hinder and delay the claimants in this case.

The statement of the facts connected with the taking of testimony as above set forth, sufficiently shows the desire of the U. S. att'y to give this case all the despatch compatible with due regard to its preparation on the part of the U. S. He is desirous to close it as soon as may be, but the court must be aware that there is a vast amount of public business in the office of the U. S. att'y, which has, at the least, an equal claim upon his time and care, and he is compelled to divide his attention so as far as possible to give each subject its fair opportunity.

To this case he has given more than its proper share of time and attention, and shall continue to press it on as promptly as may be; but he recognises no right of the claimant Laurencel to have his business attended to exclusively, and in preference to that of all other suitors, or to the prejudice of the interests of the government.

P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed August 9, 1858.

W. H. CHEVERS, *Clerk.*

Deposition of John A. Veatch.

United States District Court, northern district of California.

THE UNITED STATES }
vs. }
CHARLES FOSSATT. }

SAN FRANCISCO, *August* 18, 1858.

On this day, before the district court of the United States for the northern district of California, duly authorized to administer oaths, etc., etc., came John A. Veatch, a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, the district attorney and Mr. Peachy for the United States; Mr. Crittenden for claimant.

Questions by the District Attorney.

Question. What is your name, residence, and occupation?

Answer. John A. Veatch; I reside in San Francisco; I am a mineralogist. I have visited the land in controversy in this case twice; once about twelve months ago, and once about two weeks ago, at the request of Mr. Peachy. I made myself as familiar with the locality as I could by riding over it during two days. I have acted as a surveyor, and consider myself competent to judge of the location of boundaries.

I have seen what I suppose to be a copy of this diseño before; I have no doubt from its general appearance that it was a copy.

(Diseño in this case shown to witness.)

I examined the ground with reference to this diseño. I should think there would be no difficulty in locating this land as it is laid down here. It is very definite and exact. This diseño seems to embrace a small valley, around which the arroyo de los Capitancillos runs, bounded on the west by the arroyo Seco, and on the south by the foot of the mountains. This diseño seems to convey the idea of the locality very clearly. There are but the two arroyos, and the mountains or hills on the south, so that there can be no mistake about the location. This Sierra del Encino is the foot of the mountains, according to my judgment. It is seemingly detached from the main mountain by an arroyo that runs from east to west, making a sharp hill between the higher mountain and the plain; but I look upon this as only a bench-like portion of the mountain, which has been separated from it by the gorge cut down by the stream.

The reason I so consider it is, the gorge-like character of the valley of the little stream, and the sharpness of the ridge, and the elevation of the bottom of the gorge so considerably above the level of the valley. It is, I should judge, two or three hundred feet above it.

From geological considerations also, I should consider this ridge clearly and distinctly a portion of the mountain. The ridge does not present the spine-like character which would show its detachment from the mountain, for it runs parallel with the general course of the latter.

The portions of the streams not delineated on the diseño cut through the ridge represented thereon, and run behind it and parallel with the general course of the mountain.

The arroyo Seco heads in the sides of the mountain a little south of the New Almaden, and interlocks with the headwaters of the Alamitos. The general course of the arroyo de los Capitancillos, after leaving the plain, is north and south; the main branches inclining to the west, and interlocking with those of the arroyo Seco.

The ridge which these streams pass through, and then incline towards each, is the mining ridge. The two streams come together in a slight depression in the mountain side south of New Almaden. They do not actually join, but their headwaters are separated by a ridge, which, as the streams pass each other, has a tortuous character. I mean that the headwaters of the two streams interlock in a slight depression in the mountain side.

Exhibit A is a profile of the mountain, showing the depression between the main mountain and the Almaden hill. No. 1, on the exhibit, is the mine hill. No. 2, is the depression in which the arroyos Seco and Capitancillos head.

(Exhibit attached to deposition of R. C. Matthewson shown to witness.)

The additions in the exhibit give a fair representation of the country not delineated on the diseño. The arroyo Seco is very accurately laid down, according to my memory; I recognise it very distinctly; also the interlocking of the two little streams in a southerly direction from the mine hill.

Cross-examination.

The point at which the bottom of the gorge was estimated by me to be about two or three hundred feet above the level, was about half a mile above the Guadalupe mine.

The Guadalupe mine is, I think, about half a mile or more above the point where the Seco turns the hill. At this point, half a mile above the Guadalupe mine, I estimated the ridge to be about one hundred feet above the bottom of the gorge, and some three or four hundred feet above the lowest point in the plain. I used no instruments in this examination. I used a method I have for measuring roughly in estimating the height of the ridge above the gorge. I usually by this method approximate pretty closely.

Exhibit "A" represents a section or profile of the mountain running in a northeast and southwest direction. The point 3, I should think, would be not far from the entrance of the Capitancillos into the valley. Point 4 is the summit of Umunhum. This profile was drawn simply by the eye, from a point (8) on the first hill south of the depression. I understood that the depression south of the mine hill was two or three hundred feet below the mine hill. This exhibit was not drawn by any scale; it was simply to aid the memory with reference to the steps in the mountains. It is not to be relied on as representing the relative vertical or horizontal distances between different points. It is merely to show the number of elevations and depressions on the line of intersection. The lines 4, 5, 6, 7, and the other lines parallel to them, are not intended to represent anything in nature.

(Exhibit "J. M.," annexed to deposition of La Croze, shown to witness.)

This is a tolerably correct representation of the country. It conveys an idea to me of the country, but, as I have never measured the crosses and distances, I cannot say whether it is perfectly accurate. The fall in the arroyo Seco, below the Guadalupe mine, is, I should think, very considerable. It is much greater as you approach the head of the stream.

The exhibit attached to Matthewson's deposition is, of course, a very rough sketch; it gives no idea of the comparative elevations of the mountains. It merely shows that there is a mountainous country to the south of the ridge shown on the map.

The large map, "A. P. C.," is much more accurate. It seems to have been made with more care.

I could not, without verifying it by actual measurement, say that any topographical sketch was correct.

The idea conveyed to my mind is, that the Sierra del Encino, marked on the diseño, was intended to represent the mining ridge. I form this idea from the map alone. I do not know where the mountains called Sierra del Encino are. I do not know whether the mine ridge has a name of its own distinct from that of the sierra. I suppose the Sierra del Encino to be the mining ridge, assuming that the ridge represented on the diseño was intended to represent the first ridge that rises out of the valley.

(The Berreyesa diseño is shown to witness.)

I do not think that from this I could point out anything. I do not recognise any country with which I am acquainted; assuming the hill marked "Lomita" to be the low hill in the centre of the plain, and the point near the word "Casa" to be the junction of the creeks, then I should say the Lomas Bajas were the mining ridge. I have never seen this diseño before, nor the grants to either Justo Larios or Berreyesa.

I think that the foot of the mining ridge is topographically and geologically the foot of the mountain.

I have some experience in surveying; have located and surveyed land. If I had to locate the dotted line as delineated on the diseño, and according to the description in the Berreyesa grant, I should say there was a hopeless discrepancy between the line as delineated and the line as described.

Question. In what does that discrepancy consist?

Answer. The description directs me to run to the sierra, while the line as delineated terminates at the creek, which I consider some distance up the side of the sierra.

Question. In locating that line, would you be governed by your own opinion as to what ought to be called the sierra, rather than by the express declaration of the grantor as to what he meant by the "sierra?"

Answer. If it was very clear to my mind that something else

than what I considered the sierra was intended by him by that designation, I should locate the line according to the intention.

Question. Is it not clear that the grantor did not intend by "sierra" the mine ridge, when on the diseño to which he refers he designates the main mountain as the sierra, gives to the mine ridge the name "Lomas Bajas," and delineates the line as crossing the mine ridge and terminating at the creek?

Answer. It does not seem to me to be very clear from the objects in nature, from the fact that the mining ridge is clearly a portion of the sierra, and the general rudeness of the drawing.

In my opinion, by stopping at the mining ridge I would have to disregard the diseño, and by running to the creek I would have to disregard the description.

If I discovered that the people discriminated between the mining ridge and the sierra, and called the former by a different name, it would tend to throw light on what the grantor meant by "sierra."

JOHN A. VEATCH.

Taken and subscribed in open court, this 18th August, 1858.

OGDEN HOFFMAN,
U. S. District Judge.

Endorsed: Filed August 18th, 1858.

W. H. CHEVERS, *Clerk.*

[*Here follows plat or profile, marked Exhibit A; see original, page* 105.]

Deposition of Antonio Sunol.

United States District Court, northern district of California.

THE UNITED STATES }
vs. }
CHARLES FOSSATT. }

SAN FRANCISCO, *August* 19*th*, 1858.

On this day, before the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Antonio Suñol, a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by J. Edgar Grymes, a sworn interpreter.

Present, the district attorney and Mr. Peachy, for the United States; and Mr. Crittenden, for claimant.

Questions by District Attorney.

Question. What is your name, age, and residence?

Answer. Antonio Suñol; 61 years; I live a the pueblo of San José; I have resided in California 42 years; I lived for a short time on a rancho near the rancho of Justo Larios. It is named Santa Teresa; I am acquainted with the Cañada de Capitancillos. When I first knew it, Leandro Galindo was living there; he lived at the entrance of the Cañada on the side of San José. I cannot state precisely the year when he first went to live there, but I think it was in 1826 or 1827. He lived about a mile, or a quarter of a league, from the arroyo Seco, and near the arroyo de los Capitancillos.

I do not know where the road from San José to the hacienda crosses the arroyo Seco. I have not been there for a long time.

Justo Larios lived for a time at the house of Galindo. He lived afterward further in the Cañada.

I cannot precisely state the distance of the residence of Justo Larios, I have last spoken of, from the junction of the arroyo Seco and the arroyo de los Alamitos. I cannot say whether it was the same house that Grove C. Cook occupied.

There was a certain distance from the house to the junction of the creeks, but I cannot state it. From this last house of Justo Larios to the Capitancillos was, perhaps, two or three hundred varas. The distance between, from the house of Galindo to that of Justo Larios, I should consider to be about a league.

Justo Larios had a manufactory of soap in both houses, first at Galindo's and then at his own. There was a cultivation in the neighborhood of both houses. I do not remember any other house that either Justo Larios or Galindo had on the rancho.

I don't think Justo Larios married a relative of Galindo's. The families of Larios and Galindo are different.

I have never heard of any Sierra del Encino. I never heard of any range of hills called La Cuchilla de la Mina de Luis Chaboya; I have heard of La Mina de Luis Chaboya.

I know where the old mouth of the Almaden mine was. It is in the Sierra Azul.

I know an oak tree on the top of the mountain known as the Encino de la Sierra Azul. It is quite on the top of the mountain.

Cross-examined.

I cannot state in what year Justo Larios first went to live on the rancho. I cannot remember the year he received a concession. I believe he at that time lived in the Cañada, in the second house; I cannot remember truly. He continued thereafter to live in the second house.

I cannot say how long he lived in the first house; it appears to me he might have lived there two or three years. He sold it after-

wards. Galindo did not live there at the same time with Justo Larios. He quitted it and came to San Francisco, when Justo Larios came into it. When Justo Larios left it he demolished it. I don't know whether he cultivated land around it after he left it. After he left the first house and went to the second he had all his cultivation around the latter.

It appears to me that the mines of San Antonio, of Guadalupe, and the Almaden are in the same ridge. There are some small creeks between this ridge and the mountains behind.

The ridge has been called Lomas, or "Lomas Muertas de la Sierra Azul," by the people of the country. I never heard the name Cuchilla de la Mina given to these hills by the people of the country. I never heard of any name by which they were distinguished by the people of the country from the main sierra. Very likely I told Mr. Laurencel that these hills were called Lomas Muertas, or Lomas Muertas de la Sierra Azul. Perhaps I told him they were called Lomas Muertas de los Capitancillos. I will not say to the contrary.

I don't know the name of the creek which runs near the Guadalupe mine. I don't recollect whether the Galindos had a corral at the source of that creek.

I have had some difficulty with Mr. Laurencel, but it is passed.

We have called all the places around the Guadalupe the Mine of Guadalupe. We gave it this name when we discovered it. I mean to say that the whole place around there is called the Mine of Guadalupe. The mine of Luis Chavoya is where they first commenced to work the mine of New Almaden. This mine was generally known to the people of the country. After it was discovered, we always said, "the mine of Chavoya, which is in the Sierra Azul." The reason we did not say "the mine of Guadalupe, which is in the Sierra Azul," was because we had given the surrounding country the name of Guadalupe.

Direct resumed.

I know well the original mouth of the mine; that is to say, that of which we gave the possession.

The Chavoyas discovered the mine in 1824. I had an interest in it. It was worked by them. We took out the ore, and behind the house of Berreyesa we ground it between two stones. We then put some quicksilver in, and got nothing out.

(It is admitted that the witness attends at the request of Mr. Peachy.)

ANTONIO SUÑOL.

Taken and subscribed in open court, this 19th August, 1858.

OGDEN HOFFMAN,
District Judge.

2924

Endorsed: Filed August 19th, 1858.
W. H. CHEVERS, *Clerk.*

Order referring cause to W. H. Chevers, U. S. Com'r to take testimony, and setting argument for August 28th.

In the District Court of the United States for the northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSAT. } No. 132.

On motion of P. Della Torre, United States district attorney, it is ordered that this cause be referred to W. H. Chevers, U. S. commissioner, to take the depositions of all witnesses that may be produced before him by the parties, and report the same to the court so soon as taken, the examination of witnesses to be commenced at 12 o'clock m. of the 25th of August inst.

And it is further ordered by the court, that this cause be set down for argument on Saturday, the 28th day of August inst., at 11 o'clock a. m.

August 24th, 1858.

Endorsed: Filed August 24th, 1858.
W. H. CHEVERS, *Clerk.*

Deposition of John D. Hoffman.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSAT.

SAN FRANCISCO, *August 25th*, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came John D. Hoffman, a witness produced on behalf of the claimant in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Mr. Crittenden for claimant, and the United States district attorney for the United States.

Question 1st by claimant's counsel. What is your name, age and place of residence?

Answer. John D. Hoffman; am 28 years of age; and reside in Oakland, Alameda county.

Question 2d. What is your profession or occupation?

Answer. I am principal draughtsman in the United States surveyor general's office.

Question 3d. Are you skilled in the art of drawing and painting?

Answer. I am no great artist, but am a good draughtsman. Have been engaged for four or five years in taking and drawing topography.

Question 4th. Have you had any experience in drawing or making sketches of scenery?

Answer. I have, as far as sketches are taken for topographical uses.

5th question. Have you ever been employed on the coast survey?

Answer. Yes, sir.

6th question. In what capacity, and how long?

Answer. As draughtsman for about two years.

7th question. What kind of drawings did you make?

Answer. Charts, and took some sketches of the appearance of the coast.

8th question. Did the purpose for which those sketches were made, of the appearance of the coast, require that they should be accurate? and state for what purpose they were taken.

Answer. They were required to be accurate. They were taken to enable a vessel to ascertain whether it was in a certain locality.

9th question. What use was made of your sketches?

Answer. They were (some of them) put on engraved charts published by the government for the use of navigators.

10th question. Are you acquainted with the principles of prospective drawing?

Answer. Yes, sir.

11th question. Do you know where the land claimed in this case is, called "Los Capitancillos?"

Answer. Yes, sir.

12th question. Have you ever made any drawing or sketch of the scenery, or of any natural objects on or in the vicinity of this land? If yes, please produce it, and explain from what point of view it was taken and what it represents, and say whether or not it is a correct representation of the objects it is intended to represent.

Answer. I have; (witness produces a drawing which is marked Exhibit "W. H. C. No. 1," and annexed to this deposition.) It was taken from a little hill west of, and near station 115, on the map marked Exhibit "J. M." annexed to deposition of John La Croze, taken in this case, which hill on map marked Exhibit "A. P. C." annexed to deposition of Wm. J. Lewis taken in this case lies a little west of the creek marked "arroyo de los Capitancillos," between stations 21 and 22. This drawing represents the appearance of the country to the west and south, and is a correct representation of the objects it is intended to represent, according to my ability.

Cross-examined by United States Attorney.

13th question. Who employed you to make that sketch?

Answer. Mr. Laurencel.

14th question. Who selected the point from which you made it?

Answer. Mr. Laurencel.

15th question. Do you know the location of the New Almaden mine, and is it contained within that sketch?

Answer. The mine hill is contained within the sketch.

16th question. Please point out upon the sketch the peak of the mine ridge, and state its relative position to the mine.

Answer. It is the peak about 7 and $\frac{6}{10}$ inches from the apparent left side of the sketch, and 7 and $\frac{7}{10}$ inches from the base of the sketch. I don't know its relative position to the mine.

17th question. Do you know the two water-courses laid down on Lewis's map as "arroyo de los Alamitos," and "arroyo Seco?" With reference to this sketch, what are the relative points at which they issue from the mountains?

Answer. I have seen those water-courses on the ground; I ascended the "arroyo de los Alamitos" as far as the hacienda of the New Almaden mine, and I ascended the "arroyo Seco" as far as the Guadalupe mining works. The two water-courses are not represented on the sketch; they could not been seen.

18th question. Does that design represent the entire foreground from the hill upon which you stood to the base of the opposite high lands?

Answer. No, sir.

19th question. What is the distance in nature from that hill across the cañada to the base of the opposite high lands?

Answer. I think about two miles, estimated by the eye.

Direct resumed.

20th question. Will you point on the sketch where the Guadalupe mine is situated?

Answer. I never was at the mine, but the hill on the right side of the picture, about 7 inches from the base and 8 inches from the right end, I understood to be the Guadalupe mine hill.

JOHN D. HOFFMAN.

Sworn to and subscribed August 25th, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

Endorsed: Filed August 26th, 1858.

W. H. CHEVERS,
Clerk.

[*Here follows photographic view, marked Exhibit W. H. C. No.* 1; *see original, page* 115.]

Deposition of John C. Hays.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSATT.

SAN FRANCISCO, *August 25th*, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, etc., etc., came John C. Hays, a witness produced on behalf of the United States in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of said board of commissioners, and was duly sworn, and testified as follows.

Present, the U. S. district attorney and Mr. Peachy for the United States, and Mr. Crittenden for the claimants.

Questions by the United States Attorney.

Question 1. What is your name, age, and place of residence, and what your occupation?

Answer. John C. Hays; 42 years of age; reside in Alameda county, California; and lately was U. S. surveyor general for California.

Question 2. Look at the map marked Exhibit "J. M." attached to the deposition of John La Croze, taken in this case, and state your reasons for approving the location of the rancho "Los Capitancillos" as it is located on that map.

(Question objected to by Mr. Crittenden, claimant's counsel, on the ground that it asks the opinion of the witness, and the argument on which he reached a certain conclusion, and is immaterial.)

(Question withdrawn for the present.)

Question 3. Were you on the ground when the survey of this rancho was being made?

Answer. A portion of the time.

Question 4. Did you make a personal examination of the tract of land which you were about to locate?

Answer. A partial one?

Question 5. At whose instance did you make the location?

Answer. I think it was at the instance of Mr. Crittenden; won't be positive about it.

Question 6. Please to state why, in locating this rancho, you followed the arroyo Seco, which is on the side of the establishment of Santa Clara, from its junction with the arroyo de los Capitancillos up to the hills and around the bend which it makes at stations

71, 70, 69, 68, 67, and thence up to station 28, as a part of the southern boundary of this rancho?

(Objected to by counsel for claimant, on the ground that it asks the opinion of the witness, and is irrelevant and inadmissible.)

Answer. Because I thought the decree of confirmation made it one of his boundaries, and I think so yet.

Question 7. Please to state from what part of the decree of the land commissioners you drew this inference.

Answer. From that part which begins as follows, to wit: "And the said division line being the same line of division adopted in a partition of said rancho, made by William Wiggins, John B. Weller, and James M. Jones, as will appear by their deeds of partition, recorded in the office of recorder of deeds for Santa Clara county," etc.

Question 8. Did you examine the deed of partition referred to in that part of the decree?

Answer. As well as I can recollect, I think I did, or a copy of it.

Question 9. According to your construction of the decree of the board of land commissioners, upon which construction you acted in making this location, was the southern boundary, or what is called on the diseño the Sierra del Encino, positively fixed by the decree, or was it left to the discretion of the surveyor general to locate that sierra?

Answer. I construed the decree as fixing the sierra, by fixing a line running from station 58, on the arroyo Seco, across to station 59 on the arroyo de los Capitancillos; I consider that the decree fixed that point, and I had to find that point.

Question 10. Was that point described as being on the arroyo Seco in the deed of partition referred to in the decree of the commission?

Answer. Don't recollect whether it was or not.

Question 11. Do you know where the Almaden and Guadalupe mines are situated?

Answer. Yes, sir, pretty near; have been to them.

Question 12. In locating the western boundary of this rancho, why did you run across the spur of the sierra in which these mines are situated?

Answer. I think the decree decided that matter.

Question 13. The portion of the decree to which you have referred is the deed of partition between Wiggins, Weller, and Jones, as explained in your answer to question 7th; can you recollect the terms of the said deed which fixed that point on the arroyo Seco?

Answer. I cannot; it was the general tenor of the decree and deed; I cannot recollect the particulars; a long time has elapsed.

Question 14. In locating the sierra on the south of this rancho, did you determine its location?

Answer. I did not consider that I did; I thought that was determined by the decree.

Question 15. At the time this tract was located, was there not a dispute as to where the southern boundary line should be run, whether it should run along the arroyo Seco to its headwaters, and thence across to the headwaters of the arroyo de los Alamitos, or whether it should be run from the point where the arroyo Seco emerges from the sierra, along the northern base of that spur of the sierra in which the Almaden and Guadalupe mines are situated, until it intersected the Berreyesa line? Please now state whether in locating the southern boundary of this rancho, as you have done on Exhibit "J. M.," you undertook to decide upon this location in preference to the other, or whether you construed the decree of the board as determining which of the two locations should be made?

Answer. I only undertook to decide so far as the decree was concerned. I did not consider that I had any discretion to decide between the two locations, but that the location as I made it was determined by the decree of the board of land commissioners. The only discretion I had was to determine the boundaries of the decree.

Question 16. In determining the southern boundary of this rancho, were you not also guided by the decree of confirmation in the case of the Guadalupe Mining Company?

Answer. I had all the papers before me, and I think I was.

Question 17. Look at the decree in the claim of the Guadalupe Mining Company, and say if it did not fix a point in the southern boundary of this rancho, so positively as, in your opinion, to leave you no discretion in locating the rancho on the south different from what you have done?

Answer. You can't do it and follow the decree, that is very plain, because the Guadalupe Mining Company claim under the same grant with Fossat, and the decree of confirmation in the Guadalupe claim fixes the location as it is made on the map "J. M." The portion of the decree which fixes it is as follows, to wit: Commencing at a point on the north bank of the arroyo Seco, just 400 yards distant on the surface of the earth from a point on the same bank of the arroyo Seco, south 10 deg. west of the entrance of the Guadalupe mine, which point of commencement is intended to be about 400 yards east of the entrance to said mine, etc.

Question 18. Then, as Fossat and the Guadalupe Mining Company claim different portions under one grant, and as the location of the land confirmed to the Guadalupe Mining Company had to be made according to the decree which adopted the boundaries described by the claimants, I understand you to say that those boundaries fixed the southern line of the rancho in such a manner that you could not locate it differently from what you have done. Am I not correct?

(Objected to as leading.)

Answer. Certainly, and follow the decree.

Examination adjourned until to-morrow at 10 o'clock a. m.

W. H. CHEVERS,
U. S. Com'r.

SAN FRANCISCO, CALIFORNIA,
August 26, 1858, 10 *o'clock a. m.*

Examination of John C. Hays resumed from yesterday; present, the U. S. attorney and Mr. Peachy for the United States, and Mr. Crittenden for claimant.

Cross-examination.

Question 19. When you certified the map of which Exhibit "J. M." is a copy, and made the location of the land as represented on that map, had you any doubt as to the correctness of that location under the decree of confirmation by the board?

Answer. No, sir.

Question 20. That location was made by you as U. S. surveyor general for California, was it not?

Answer. Yes, sir.

Question 21. When was that location made?

Answer. In 1855.

Question 22. Since that time have you had occasion often to examine that decree of confirmation, or to refer to that survey?

Answer. I have very often referred to the survey.

Question 23. Have you now a distinct recollection of the terms of that decree of confirmation and of the contents of the papers examined by you at the time you made the location of the land?

Answer. I have a tolerably distinct recollection of the terms of the decree, and of the most important papers that governed me in the location of the land.

Question 24. Have you now a distinct recollection of all the reasons which then operated on your mind to induce you to locate the southern line of the grant as you did locate it?

Answer. I have a tolerably distinct recollection of them.

Question 25. Were there no other reasons than the one you mentioned—that is, the designation of the dividing line between the lands confirmed to Fossat and the Guadalupe Mining Company?

Answer. My principal reason for going over to the arroyo Seco was, that the dividing line between the Guadalupe Mining Company's claim and this claim of Fossat, by the decrees of confirmation, had to commence at a point on that arroyo. The decree of confirmation called for the Berreyesa line on the east.

Question 26. In locating this land you necessarily exercised a discretion, did you not, so far as to determine on the ground what

were the objects and lines intended and referred to in the decree of confirmation?

Answer. Yes, sir.

Question 27. In any of the answers you have made to questions put to you on your direct examination, do you mean to be understood that you did not exercise your judgment and discretion to that extent?

Answer. No, sir.

Question 28. The decrees of confirmation in the case of Charles Fossat calls for the sierra as the southern boundary of the land; did you not ascertain and determine on the ground what was meant by the sierra in the decree?

Answer. Yes; the point between the Guadalupe Mining Company's claim and the claim of Fossat fixes the sierra.

Question 29. You did determine, did you not, that by the sierra the decree did not mean the ridge of hills in which the Guadalupe and Almaden mines are situated, but did mean the main range of mountains to the southward of that ridge?

Answer. That was my interpretation of the decree.

Question 30. In that portion of the decree of confirmation in this case to which you have referred in your answer to question 7 of your direct examination, and in deeds of partition referred to in the decree, do you find anything which indicates or directs that the dividing line between the claims of Fossat and the Guadalupe Mining Company shall commence or terminate at a point on the arroyo Seco? Please examine that part of the decree and the deed referred to.

Answer. I do not find it in that portion of the decree and the deed referred to. I should have added in my answer to question 7, that I drew my inference from the portion of the decree I referred to, together with the decree of confirmation in the case of the Guadalupe Mining Company.

Question 31. What papers had you before you when you located this land?

Answer. I had all the papers referring to the Justo Larios grant, also the diseño of Berreyesa; whether I had the Berreyesa grant, or any translation of it, I do not recollect; probably I had; I had all the papers I thought necessary to locate the land.

Question 32. Do you not recollect examining at that time the Berreyesa grant, or a translation of it, and particularly that portion of it which says that the land granted to Berreyesa is bounded on the west by the rancho of the citizen Justo Larios, which has for boundary the angle which the arroyo Seco forms, and that of the Alamitos southward, the eastern base of the small hill situated in the centre of the Cañada till it reaches the sierra, and that portion of the grant which refers to the diseño?

Answer. Yes, sir; I recollect particularly to have examined that portion of it relating to boundaries.

Question 33. In locating the eastern boundary line of the Justo Larios grant, and especially in determining whether that line, starting at the junction of the arroyo Seco and the arroyo de los Alamitos, and passing by the small hill in the plain, should terminate where it first struck the mine ridge, or whether it should cross the mine ridge and be prolonged until the arroyo de los Alamitos at the foot of the main sierra, was not your judgment materially influenced by these facts:

First. That the grant to Berreyesa declares his land to be bounded on the west by the rancho of Justo Larios, and then goes on to declare what the boundary of Justo Larios is, and shows that it extends to the sierra.

Second. That the diseño of Berreyesa, referred to in his grant, delineates that western line of Berreyesa, and shows that it is prolonged until it strikes the arroyo de los Alamitos.

(Objected to by Mr. Peachy as leading.)

Answer. My judgment was somewhat influenced by those facts, but principally by that portion of the confirmation of the claim of the Guadalupe Mining Company which fixed a point in the southern boundary of the land confirmed to that company at station 58 in La Croze's survey.

Question 34. Do you wish your answer to question 14 of the direct examination to stand as it is written down, or have you any explanation or qualification to make of it?

Answer. I did exercise my own discretion in finding out the point on the arroyo Seco, pointed out in the decree of the board; but I did not exercise my discretion in determining between the two claimed locations of the sierra.

Question 35. Is there anything in the decree of confirmation in this case which fixes the sierra by fixing a line running from station 58 on the arroyo Seco, on La Croze's map, across to station 59 on the arroyo de los Capitancillos?

Answer. Yes, together with the confirmation to the Guadalupe Mining Company.

Direct resumed.

Question 36. By what law did you locate this land before a decree of final confirmation?

(Question objected to as new matter, not drawn out on cross-examination.)

Answer. Under instructions issued to my predecessor upon application of the parties, and at the expense of parties, to make preliminary survey of the land.

Question 37. It is well known that there are other ranchos adjoining this one of Larios, to wit: Bernal's on the north, Narvaez's

on the west, Berreyesa's on the east, and the Almaden mine and lands on the south. Did you notify the claimants of any of these ranchos of your intention to make a survey and location of the Larios rancho?

(Question objected to on same ground as last.)

Answer. I don't know whether the deputy surveyor did or not. I did not myself.

Question 38. Did you not have on the ground with you, when you were making an examination of this rancho, a copy of the decree of confirmation by the commissioners of the land claimed by the Guadalupe Mining Company?

Answer. Yes, sir.

Question 39. Was not this southern boundary of Larios's rancho surveyed and located by your deputy, La Croze, according to your instructions; and was not the eastern boundary of this rancho also located by Mr. La Croze by your direction?

Answer. Yes, sir.

Question 40. I see noted on this map, outside of the land of Larios as thereon located, the name of the "rancho of San Juan Bautista," claimed by the heirs of Augustin Narvaez, formerly part of the "establishment of Santa Clara;" and I also see noted on this map the "Rancho Santa Teresa," claimed "by the heirs of J. Joaquin Bernal;" and I also see noted on this map the "Rancho of San Vicente," claimed by the heirs of "J. Reyes Berreyesa." Do you know why Mr. La Croze did not note on this map the position of the mines of New Almaden, or of the boundaries of the land claimed by Andreas Castillero?

Answer. The surveyor is compelled to note the names of the adjoining ranchos when he knows them, but is not compelled to note any objects within the survey, without the line runs very near, or comes in contact with the object.

Question 41. Who was with you when you made the recognizance of this rancho?

Answer. I think Mr. Laurencel, Mr. La Croze, (the surveyor now with me,) Major Caperton, and several others were with me. None of the owners of the adjoining ranchos were with me that I know of.

Cross-examination resumed.

Question 42. Whose duty was it to give notice to owners of the adjoining land of an attempted survey?

Answer. The deputy surveyors.

Question 43. Had Mr. Peachy any knowledge that this survey was being made, or about to be made; and was Mr. Peachy present during any part of the time?

Answer. I did not notify Mr. Peachy, but I was with him on the rancho after I had made the preliminary examination.

Question 44. Did not Mr. Peachy know before you left town that you were going to make that survey, and did not Mr. Peachy say he would meet you there?

Answer. I don't recollect telling Mr. Peachy I was about to make this examination. I recollect meeting Mr. Peachy the same day that I had concluded the examination at the Almaden mines, and riding with him from the hacienda on to the survey.

Question 45. How far is the hacienda of the mine from the house of Mr. Laurencel, where you stayed while you were engaged in making the preliminary survey?

Answer. About a league, three miles.

JOHN C. HAYS.

Sworn to and subscribed August 26th, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

Endorsed: Filed August 26th, 1858.

W. H. CHEVERS, *Clerk.*

Deposition of Jose Maria Amador.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSATT.

SAN FRANCISCO, *August* 26, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came José Maria Amador, a witness produced on behalf of the United States in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present, U. S. district attorney and A. C. Peachy, esq., for the United States, and Mr. Crittenden and Mr. Randolph for the claimant.

Questions by U. S. District Attorney.

Question 1. What is your name, age, and place of residence?

Answer. José Maria Amador; sixty-eight years of age; and I live at the mission of San José.

Question 2. Do you know the Rancho de los Capitancillos and the adjoining country, and for how long have you known it?

Answer. I know the Cañada de los Capitancillos and the adjoin-

ing country, and I have known them since they were first taken up or occupied.

Question 3. By whom was the cañada first occupied?

Answer. By Macario Castro, deceased.

Question 4. Did Macario have a corral on that land?

Answer. He had.

Question 5. Whereabouts on the land was it?

Answer. About two thousand varas above the forks of the arroyo, on the southern side, about the middle of the cañada; I mean the forks of the arroyo Seco and the arroyo de los Capitancillos, or Alamitos, as it is now called. The arroyo Seco is a small arroyo running down from Berreyesa's house.

Question 6. Do you know the arroyo now called the Arroyo de los Alamitos? If you do, state by what name that arroyo was formerly known.

Answer. I do; it was always known in former times as the arroyo de los Capitancillos.

Question 7. How did you know the situation of the corral of Macario?

Answer. Because I saw it with my eyes.

Question 8. Were you often on the land, or did you live there at any time?

Answer. I did not live there; but when the deceased Macario left the corral and took his cattle away from it, my father took possession of it by permission of the alcalde of San José, and I also kept some cattle there myself. It was in this manner I became acquainted with it.

Question 9. Did you know the land when Galindo lived on it?

Answer. I did.

Question 10. How much land did Galindo claim at that place, and where was it situated?

(Objected to by Mr. Randolph, because this witness is incompetent to prove the claim or the extent of the land claimed by Galindo; and because what Galindo may have claimed is irrelevant to the present issue; and further, because the claim of Galindo is a matter of record, and already in evidence in this case.)

Answer. As I understood, he claimed a league within the cañada.

Question 11. Do you know any sierra in that neighborhood which was termed—(The district attorney here says that he proposes to ask this witness whether the sierra to which he refers in this question was known by a certain name which he is about to mention to the witness; whereupon the attorney for the claimant objects to the question being put in that form, as obviously leading, and desires the district attorney to ask the witness by what name the sierra was known, and without suggesting in his question any name)—sierra del Encino?

Answer. No, sir; I do not know it.

Question 12. Do you know any place that was called El Encino?

Answer. I do.

Question 13. Where and what was it?

Answer. It was called El Encino Coposo de la Sierra Azul. It is on the sierra Azul, near the Guadalupe mine, at the right-hand side as you go up the sierra.

Question 14. Do you know a place in that neighborhood called La Cuchilla de la Mina de Luis Chabolla?

Answer. No, sir; I do not.

Question 15. Do you know a place called Cuchilla de Santa Teresa; and if so, where is it?

Answer. I do; it is the place where Galindo's house was. It divides the cañada in two, and runs towards Murphy's rancho. It runs alongside the arroyo. I mean that the Cuchilla de Santa Teresa and the sierra Azul from the cañada.

Question 16. Do you know the old mouth of Almaden mine; and if you do, what is the name of the place upon which it was situated?

Answer. I do. It was situated where it is now, in the same sierra where it was discovered. I don't know what name they gave it. I know where it is, and could point it out. It is on the Lomas Bajas de la Sierra Azul. It is in the sierra Azul itself. The sierra descends regularly; there is no breach nor separation in it. The mine is on a low loma; it is all known as the sierra Azul, from the foot to the top of it.

Cross-examination.

Question 17. How long have you been in town?

Answer. Eleven days to-day.

Question 18. Where have you been staying in town?

Answer. At the California Hotel.

Question 19. Who pays your expenses?

Answer. I don't know; Mr. Campbell gives me two or three dollars at a time, but I don't know where the money comes from.

Question 20. Is that the Mr. Campbell who is the son-in-law of Antonio Maria Pico, and who is one of the attorneys for the Almaden Company?

Answer. He is the son-in-law of Antonio Maria Pico, but I don't know whose lawyer he is; I don't know whether the money comes from his own pocket, or whether it comes from the company.

Question 21. When it is all over, and you can go back home again, how much money are you to get for your trouble in coming down here to testify?

Answer. Nothing; I have been promised no pay, except that I should come and testify, and my expenses should be paid.

Question 22. Are you not now a poor man? Have you not in some manner lost your rancho and cattle, and usually find it very hard to raise even a small sum of money?

Answer. I am; I support myself by my labor; I have lost it all in lawsuits; my labor furnishes me with enough for the support of myself and family.

Question 23. Who was the person who asked you to come here and testify, promising to pay your expenses, and how long ago?

Answer. It is eleven days ago to-day since I left my home; I was requested to come and testify what was the truth by Antonio Maria Pico and Mr. Campbell; I came to testify because a relation of mine, Antonio Maria Pico, asked me to come; Mr. Campbell is a son-in-law of Antonio Mario Pico.

Question 24. Have you not had some talk with Pico and Campbell about the mine of New Almaden and the place where it is situated, and did not Mr. Campbell and his father-in-law, Pico, agree with you about its being all one sierra?

Answer. They had no conversation with me, as they knew I had lived such a very long time at the pueblo, and knew all about the sierra. They asked me to come and testify; it was not necessary for any one to tell me it was all one sierra, as I knew that myself; they only asked me if I knew the place; if it was one sierra; and I said yes, and that I had known it so long; and I stated to them what I have stated here; they told me about the lawsuit they had.

Question 25. What lawsuit was it they told you they had?

Answer. They did not tell me they had any lawsuit; they only told me they wanted me to come and testify in relation to a mistake, or some suit about the New Almaden mine.

Question 26. What mistake was it that they spoke of? was it a mistake about the true name of the place where the mine was situated?

Answer. They did not speak to me about any mistake; they merely requested me to come and testify as to what was the true place and name of the encino and the sierra Azul, and to clear up all the mistakes as to those matters; they invited not only me, but others also.

Question 27. Who were those other persons invited by Campbell and Pico to come and testify?

Answer. Those whom I know were Suñol, Romero, and myself.

Question 28. What was the reason that the people called that Cañada los Capitancillos?

Answer. Since I have had the use of reason, I have known it by the name of los Capitancillos; I don't know why the old inhabitants gave it that name.

Question 29. Don't the words los Capitancillos mean the Little

Captains? Do you not remember to have heard the old people say that they called the cañada by that name, because a long time ago two or three Indian chiefs or captains used to live there, and that they had their rancheria on the stream not far from where the Guadalupe mine is now, and that they used sometimes to camp where the house of Andres Martinez is now?

Answer. These words mean the Little Captains; I never did hear them say that that was the reason why they called it los Capitancillos; that could not be the reason, because there were Indians all over that part of the country, and each tribe had its own chief; I have heard the old people call it by that name, but don't know why they so called it; I have seen rancherias all along the cañada, but do not know, and have not heard, the old people say why that name was given it.

Question 30. Did you ever hear of the mine of Luis Chabolla; if so, where was that mine?

Answer. I heard that Luis Chabolla, for some reason, had dug in a hole which had formerly been made by the Indians; I think it is the same as the Almaden.

Question 31. Do you know the mine now called Guadalupe, and where it is situated?

Answer. I do; it is this side of the Almaden.

Question 32. Is there a stream near the Guadalupe mine, and what is the name of it?

Answer. There is a little dry creek that runs down from the mountains, but I don't know that it had any name.

Question 33. The ridge which lies between the New Almaden and the Guadalupe, and in which they are both situated, was not that called La Cuchilla del Aguaje in old times?

Answer. No, sir, never; it never was.

Question 34. Was there not a place in the cañada called Aguaje?

Answer. There was a place down in the cañada which was called Aguaje.

Question 35. Did not the Galindos have a corral? Had not Rafael and Nasario Galindo a corral, situated near the source of that arroyo, which passes near the mine of Guadalupe?

Answer. Rafael Galindo had a corral near the source of a little branch, not what I would call an arroyo, which passes near the mine of Guadalupe.

Question 36. What do you call the ridge where the Guadalupe mine is situated?

Answer. I call it the sierra Azul.

Question 37. Did not that arroyo which you have said is now called the Alamitos, once go by the name of arroyo of Macario?

Answer. I never heard it called the arroyo of Macario; I have always heard it called the arroyo de los Capitancillos.

Question 38. Did not Macario have a vineyard among the lomas, near the margin of the arroyo of Macario?

Answer. I have never seen it or heard of it.

Question 39. What is the reason that you have taken these last eleven days to get ready to testify in this case? Why could you not come up and testify as soon as you got here?

Answer. Because there has been business in the offices; I wanted to return the very day I came; I have been in attendance every day.

Direct resumed.

Question 40. Who was Macario or Macario Castro, of whom you have spoken, and when did he first go into the neighborhood of the pueblo of San José?

Answer. In the years 1798 or 1799, and up to 1801, he was a commissioner of the pueblo of San José.

Cross-examination resumed.

Question 41. Have you at any time ever lived in the Cañada de los Capitancillos?

Answer. I have never lived there, but I had cattle there; my father also had cattle there.

Question 42. How long since you ceased to have cattle there, and moved from the neighborhood?

Answer. I ceased to have cattle there since the year 1825. I moved away from the pueblo in 1818. I enlisted in the army.

his
JOSÉ MARIA ⋈ AMADOR.
mark.

Sworn to and subscribed, August 26th, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

Indorsed: Filed August 26th, 1858.

W. H. CHEVERS, *Clerk.*

Deposition of Carleton Watkins.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSAT.

SAN FRANCISCO, *August 27th*, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Carleton Watkins, a witness produced on behalf of the claimant in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land

claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Mr. Crittenden for claimant, and the U. S. attorney and Mr. Peachy for the U. S.

Question 1st by claimant's counsel. What is your name, age, place of residence and occupation?

Answer. Charleton Watkins; am 29 years old; reside in San Francisco, Cal., and am a photographist.

Question 2d. Do you know where the rancho of Los Capitancillos delineated on map "J. M." attached to the deposition of John La Croze in this case?

Answer. I do.

Question 3d. Have you taken any photographic view from any point on that land or its vicinity? If yes, please produce it and say from what point it was taken, and in what direction, and whether or not it is accurate.

Answer. Yes. Witness here produces photographic view marked "W. H. C. No. 1" and hereto annexed. It was taken immediately in front of Mr. Faxon's house, about twenty yards in front, at the Guadalupe mine, north of the arroyo, at a point about thirty feet in elevation above the creek, and about two hundred yards from it; view of the country looking about south. It is accurate. The buildings are the buildings of the Guadalupe Mining Company.

4th question. What object is that which projects above the upper line of the mountain near the right of this view, just below the letter "A?"

Answer. It is a large oak tree.

Cross-examination.

5th question. Who selected the point from which you took that view?

Answer. I did myself.

6th question. What induced you to select that view, or to take it at all?

Answer. The view looked best of the buildings from that point. I took the sketch at the request of Mr. Laurencel. He desired a view of El Encino from the Guadalupe mines, and requested me to make one from that neighborhood. In compliance with that request, I went to the ground, and when there, selected the spot which would give the best view of El Encino.

CARLETON WATKINS.

Sworn to and subscribed August 27th, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

Indorsed: Filed August 27, 1858.

W. H. CHEVERS, *Clerk.*

[*Here follows photographic view; see original, page* 142.]

Deposition of Jose Romero.

United States District Court, northern district of California.

THE UNITED STATES }
vs.
CHARLES FOSSATT. }

SAN FRANCISCO, *August* 27, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, etc., etc., came José Romero, a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present, the U. S. district attorney and Mr. Peachy for the United States, and Mr. Crittenden for claimant.

Questions by United States District Attorney.

Question 1. What is your name, age, and place of residence?

Answer. José Romero; am 58 years of age; and reside in Alameda county, California.

Question 2. Do you know the rancho de los Capitancillos and the adjoining country, and how long have you known it?

Answer. I do. I have known them ever since I had the use of reason.

Question 3. By whom was it occupied when you first knew it?

Answer. By Leandro Galindo.

Question 4. Where did Leandro Galindo live at that time?

Answer. He lived in front of the point of the hill called Cuchilla de Santa Teresa, near the road, about fifty varas from the arroyo de los Capitancillos.

Question 5. Do you know the arroyo now called arroyo de los Alamitos? If you do, please state by what name that arroyo was formerly known.

Answer. I do. It was formerly known by the name of arroyo de los Capitancillos.

Question 6. Were you much upon the land at any time during its occupation by Leandro Galindo?

Answer. I was four years upon it. I had a house there, and lived there four years in company with Leandro Galindo. I assisted him to take care of his cattle. This was in the years 1832, 1833, 1834, and 1835.

Question 7. Do you know of any place in that neighborhood that was called by the name of Sierra del Encino?

Answer. No, sir.

Question 8. Do you know of any place or object in that neighborhood which was called El Encino?

Answer. I do.

Question 9. Please describe it.

Answer. It is a large tree called El Encino Coposo de la Sierra Azul. It is near the source of a small branch or creek which runs down the mountain and passes near the Guadalupe mine. The small creek (arroyito) has lately been christened the corral of the deceased Rafael. I mean that they call the cañada through which it runs by this name, because Rafael had a corral in it near the source of this creek.

Question 10. What is the name of the arroyo, not the arroyito, which passes by the Guadalupe mine?

Answer. It is the same that I have been describing. The main arroyo, the large arroyo, is called the arroyo de los Capitancillos. The arroyo Seco is an arroyo which joins the arroyo de los Capitancillos.

Question 11. Do you know a place in that neighborhood called La Cuchilla de la Mina de Luis Chabolla?

Answer. No, sir.

Question 12. Do you know a place called Santa Teresa; and if so, where is it?

Answer. I do. It is on the left-hand side as you go to the Almaden mine.

Question 13. Have you ever been to the place which you have called the Encino Coposo?

Answer. Yes, sir.

Question 14. Do you know the old mouth of the Almaden mine; and if you do, what is the name of the mountain in which it is situated?

Answer. Yes, sir. The name of the mountain is La Sierra Azul.

Cross-examination.

Question 15. How long have you been in town?

Answer. Twelve days to-day.

Question 16. Where have you been staying in the city during that time?

Answer. In the California Hotel.

Question 17. Who pays your expenses there?

Answer. Mr. Campbell.

Question 18. What Mr. Campbell?

Answer. I don't know what Mr. Campbell it is. It is the same

Mr. Campbell who was here yesterday; a lawyer, or I don't know what.

Question 19. Is he not a son-in-law of Antonio Maria Pico?

Answer. He is.

Question 20. Has Mr. Campbell, or any one else, furnished you with any money since you have been in town?

Answer. Mr. Campbell has given me some; he has paid my expenses.

Question 21. How much did he give you?

Answer. Enough to pay my daily expenses.

Question 22. How much are your daily expenses?

Answer. About $1 50 or $2 00.

Question 23. Has Mr. Campbell given you only $1 50 or $2 00 per day since you have been here?

Answer. He has given me more.

Question 24. How much more?

Answer. He gives me some every day; enough to pay for my board and lodging, and my expenses.

Question 25. How much are you to get to compensate you for the time you have lost here, and for your trouble in coming here to testify?

Answer. I don't suppose I will get anything; I have had no agreement to get anything; I was sent for and I came.

Question 26. Who sent for you?

Answer. Mr. Campbell.

Question 27. Where were you when you were sent for?

Answer. At my house.

Question 28. Who came for you?

Answer. Antonio Maria Pico.

Question 29. What did he tell you he wanted with you?

Answer. He did not tell me what he wanted with me; he only told me Mr. Campbell wanted me.

Question 30. Did he tell you nothing about this rancho of Capitancillos, or the New Almaden mine?

Answer. No, sir.

Question 31. Did you not know before you came to town that you were wanted as a witness to testify something about this rancho or the mine?

Answer. I did not know it until I reached here.

Question 32. Who told you so when you reached here?

Answer. Campbell.

Question 33. State all the conversation between you about the matter.

Answer. All the conversation was that he asked me if I knew the Cañada de los Capitancillos, El Encino, La Sierra Azul, and the mine; I told him I did, and that I also knew the corral of the deceased Rafael.

Question 34. Had you not talked about the matter before with Campbell or Pico?

Answer. No, sir; I knew nothing about it before I came here.

Question 35. Has no one talked with you about these matters within the last year, before you came here?

Answer. No, sir; I very seldom leave my home; seldom ever go to the mission. When he called upon me he said I would not have to remain here more than a day or two.

Question 36. Has not Mr. Campbell been with you a part of every day since you have been in town?

Answer. No, sir; when I have seen him, he merely called and handed me what was necessary to pay my expenses.

Question 37. Have you not seen him every day since you have been here?

Answer. I have seen him every day, or every second day.

Question 38. Who came with you to this building yesterday?

Answer. Amador and myself.

Question 39. Was any paper served on you requiring you to appear here as a witness?

Answer. No, sir.

Question 40. How far do you live from the mission of San José?

Answer. About a mile.

Question 41. What is your occupation?

Answer. That of a farmer.

Question 42. Are you rich?

Answer. No, sir, if I were rich I would not work.

Question 43. Can you afford to lose twelve days without being compensated for it?

Answer. I suppose I will have to lose the time now; I don't suppose I will be paid for it.

Question 44. Were you not present yesterday when José Maria Amador was examined?

Answer. I was present at first; afterwards kept out.

Question 45. How long have you lived in the place you now reside?

Answer. Two years.

Question 46. Do you own the land on which you now reside?

Answer. No; it belongs to a son-in-law of mine.

Question 47. Do you own any lands in California?

Answer. No, sir.

Question 48. Do you own any property?

Answer. No, sir.

Question 49. How long has it been since you have lived in what is now Santa Clara county?

Answer. I have not lived in Santa Clara county since 1848.

Question 50. Where did you first live when you left this rancho in 1835?

Answer. I went to the pueblo of San José.

Question 51. How long did you stay there?

Answer. One year.

Question 52. Where did you then go to live?

Answer. I went to the Positos Livermore's.

Question 53. How long did you live there, and where did you then remove to?

Answer. Two years, and then moved to the mission of San José.

Question 54. Have you resided in the vicinity of this rancho at any time since 1835?

Answer. I have not.

Question 55. Did you ever hear of the mine of Luis Chabolla?

Answer. Yes, sir.

Question 56. What did you say was the name of that arroyo which passes near the Guadalupe mine, between the mine and the sierra?

Answer. El Arroyito del Corral del Defunto Rafael.

Question 57. Do you know where the Guadalupe mine is?

Answer. I knew the loma hill in which it is, but don't know in what part. I know the sierra in which it is, but don't know in what part it is. Loma and sierra mean the same thing with us.

Question 58. Is not the Guadalupe mine situated in the same ridge of hills in which the Almaden mine is situated?

Answer. It is in the same ridge.

Question 59. Have you ever been to the Almaden mine?

Answer. Yes, sir.

Direct Examination resumed.

Question 60. Did you and José Maria Amador, who testified yesterday, have, before your examination, an interview with the U. S. district attorney, in which he inquired of you as to your information upon the points to which he has examined you upon this deposition?

Answer. No, sir; I don't know that it was in a room in this house; don't remember where it was; I remember having seen the district attorney in a room.

his
JOSÉ ⋈ ROMERO.
mark.

Sworn to and subscribed August 27th, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

Endorsed: Filed August 27th, 1858.

W. H. CHEVERS, *Clerk.*

Opinion on motion for Continuance.

THE UNITED STATES }
vs.
CHARLES FOSSATT. }

This cause having been set for a hearing on this day, a continuance is moved for on the part of the United States, in order that further testimony may be produced. The motion is strenuously resisted on the part of the claimant. To determine whether the court in the exercise of its discretion should grant, the previous proceedings in the cause should be adverted.

The transcript from the board of commissioners was filed in this court on the 2d November, 1854; a notice of appeal by the U. S. was duly filed February 20th, 1855.

The cause remained pending in this court until August 13th, 1847—a period of 2 years and 6 months; when the proofs on both sides having been closed, it was argued and submitted.

No suggestion on either side was then made, that the cause was not fully ready for hearing, nor any application for further delay, nor was it intimated by the parties that any further testimony was desired, or could be obtained. The decree of this court was signed on the 17th August, and an appeal having been taken by the U. S., it was heard by the Supreme Court at the last term.

The mandate and opinion of the Supreme Court were filed in this court on the 17th June, 1858. By the mandate the cause was remanded to this court, with directions to enter a decree in conformity to the opinion of the Supreme Court.

By that opinion it appears that, in entering the decree, "the external boundaries designated in the grant were to be declared by this court from the evidence on file, and such other evidence as may be produced before it."

The mandate and opinion having been filed on the 17th June, a motion was made on the 23d June that a decree be filed designating the external boundaries, as directed by the Supreme Court. On the application of the district attorney, this motion was continued until 30th June. On that day the district attorney stated that he desired to produce further testimony on the part of the U. S., and an order was made referring the cause to a commissioner to take proofs, with liberty to either party to move to set the cause for a hearing in default of due diligence on the part of the opposite side.

Under this order various depositions were taken on the part of the United States.

On the 3d August notice of a motion to set the cause for a hearing was given by the claimants, and on the 9th August the motion was heard. It was thereupon ordered by the court, the U. S. attorney consenting thereto, as appears by the order and the minutes of the court, that the testimony on both sides be closed on the 21st August, and the cause set for a hearing on the 24th August.

Depositions were accordingly taken by the United States on the 18th and 19th August.

On the 24th August the district attorney again moved for further time to take testimony, which was opposed by the counsel for claimant.

The court, after hearing argument, ordered that further time should be allowed, viz: until the 28th, and that the cause be set for a hearing on that day.

The district attorney now moves (August 28th) for further time to take testimony. He does not state to the court the names of any witnesses he proposes to examine, their number, nor the facts intended to be established by them, that the court may judge of its materiality. He declines to indicate any time within which the proofs will be closed, but insists on the right to examine witnesses so long as it shall appear to the court that he is proceeding therein without unnecessary delays.

On the part of the claimant it is urged that any further postponement of this cause will in all probability prevent its being heard by the Supreme Court at its ensuing term.

It would be deeply regretted by the court if this litigation so long protracted, and involving such vasts interests, should not at the next term of the Supreme Court reach a determination.

The question, however, for my consideration is, have the U. S. had such reasonable time for taking proofs as ought to be allowed them?

It is to be observed that in the opinion of the Supreme Court, this court is directed to "declare the external boundaries of the grant from the evidence on file, and such other evidence as may be produced," &c.

It is clear that this court was bound to afford a reasonable opportunity to take the further evidence on which its declaration of the boundaries was to be founded.

From the 30th June, the date of the order directing the evidence to be taken, the cause has been prosecuted by the United States with diligence.

On the 18th and 19th August depositions were taken, and on yesterday and the day before witnesses were examined, both on the part of the United States and the claimants. Certainly no laches or unnecessary delay can be imputed to the district attorney. He now states that he has other witnesses whose testimony he will proceed to take at once if the opportunity be afforded.

With the strongest desire to bring this cause to a termination, I do not feel at liberty, under the direction given by the Supreme Court, to refuse the application.

If two years and a half was not an unreasonable time for taking the original testimony in this court, less than two months can

hardly be deemed sufficient when the Supreme Court have seen fit to send back the cause in effect for further proof.

The court is assured by the district attorney, in the most emphatic manner, that he has no wish to delay the cause, but that he only desires time to submit proofs important to the interests of the United States, and which are in readiness to be taken. I do not feel at liberty to deny him the opportunity of doing so.

An order must be entered allowing the district attorney ten days further time to produce testimony in the case.

Endorsed: Filed August 28th, 1858.

W. H. CHEVERS, *Clerk.*

Order to close proofs on 7th Sept., and fixing argument for 9th Sept., 1858.

District Court of the United States, northern district of California.

THE UNITED STATES vs. CHARLES FOSSATT. } No. 132.

Stated Term, August 28th, 1858.

This cause having been regularly set for hearing this day, was called. The U. S. attorney moved for a continuance of the cause, which motion was opposed by claimant's counsel. The motion having been argued by the counsel for the respective parties, and due deliberation being had, it is now here ordered that further time be allowed to take testimony herein till Tuesday, the seventh September next, on which day the testimony shall be closed, and that the cause be referred to W. H. Chevers, U. S. commissioner, or to such other person as may be agreed upon by the parties, to take the testimony and report the same to the court on the 7th September next. And it is further ordered by the court that the cause be set for hearing on Thursday, the 9th day of September, 1858.

Endorsed: Filed August 28th, 1858.

W. H. CHEVERS, *Clerk.*

Notice.

United States District Court, northern district of California.

THE UNITED STATES vs. CHARLES FOSSATT. } No. 132.

SAN FRANCISCO, *Sept. 2d*, 1858.

SIR: You are hereby notified that I will examine Henry C. Malone, Leslie C. Bostick, and Isaac Branham, in the above case, on the part of the United States, at 12 o'clock noon, to-morrow, the

3d September inst., before W. H. Chevers, esq., United States commissioner, at this office.

Yours, etc.,
P. DELLA TORRE,
U. S. Attorney.

A. P. CRITTENDEN, Esq.,
Attorney for Fossatt.

Endorsed: Received copy within, this 2d September, 1858, ¼ to 5 p. m. Will not attend on such short notice.

A. P. CRITTENDEN,
Attorney for Fossatt.

Deposition of Isaac Branham.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSATT.

SAN FRANCISCO, *Sept. 3d*, 1858—8 *o'clock p. m.*

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, etc., etc., came Isaac Branham, a witness produced on behalf of the United States in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows.—Witness sworn on voir dire.

Present, the U. S. attorney and Mr. Peachy for the United States, and Mr. Crittenden for claimant.

Questions by Claimant's Counsel.

Question 1. Have you any interest in the event of this suit?

Answer. I don't know that I have.

Question 2. Have you not a claim or some interest in a claim to the land claimed by Charles Fossatt in this case, or to some part of it?

Answer. Not that I think would be affected by this suit.

(Answer objected to, as not responsive to the question; and the question is repeated.)

Answer. I have a claim in the pueblo lands, which claim I consider covers a portion of the Fossat claim.

Question 3. You are interested, are you not, in the claim presented in the name of the city of San José, and which was confirmed by the U. S. district court for the northern district of California, and the confirmation of which has been set aside, and the claim is now pending in this court?

Answer. I am interested in that claim. I know nothing about the claim being set aside.

Question 4. Is not the land claimed by Charles Fossat in this case, or the greater part of it, included within the boundaries described in the decree confirming the claim of the city of San José?

Answer. Yes, sir.

Question 5. What interest have you in the claim of the city of San José? State its proportion and nature.

Answer. I own one-eleventh and one half of one-eleventh of the city interest, after paying all the indebtedness that the said property was sold for, after paying the expenses.

The U. S. commissioner adjourned the deposition until to-morrow at 12 m.

ISAAC BRANHAM.

Sworn to and subscribed, September 3d, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, *Sept.* 4, 1858—1 *p. m.*

Cross-examined on voir dire.

Question. When did you acquire your interest in the pueblo claim?

Answer. Somewhere in the neighborhood of 1850 or 1851.

(The witness is objected to on the part of the claimants as incompetent, on account of interest in the subject-matter in dispute.)

Isaac Branham, being duly sworn in chief, deposes and says:

I am the Isaac Branham who was examined in this case on or about the 15th of April, 1857. On that occasion, in my answer to the ninth cross-interrogatory, I answered with regard to the ridge in which the San Antonio, New Almaden, and Guadalupe mines are situated, as follows:

"Answer 9. It is a ridge of low hills, separated from the main mountains by the creek Capitancillos and a low depression in the ridge, or a small valley—quite a small valley."

I now desire to correct that statement in the following manner:

After giving my testimony as above, I had occasion to go over the ground, and then I made a particular examination of it. At the time I then testified, I did not expect to be examined upon that point of the case, as I was summoned only for the purpose of speaking as to the reputation of Mr. Forbes; but in answer to the question put, I gave what was then my opinion. On my return to Santa Clara I was out on a hunt over the neighborhood of the mine, and being there, it brought to mind what I had said upon my examination, and caused me to examine it more particularly. I then, on the spot, became satisfied that the ridge in which the mines are situated is a spur of the sierra, and the New Almaden mine is in a high

peak of that spur. I have frequently since then been on the ground, and remain of the opinion last expressed.

I have no doubt in my mind that the mining ridge is a portion of the Blue mountain.

I would consider the headwaters of the stream which passes by the Guadalupe mine to be high up in the mountains—in the neighborhood of the highest peak, which is termed Umunhum.

I think when I saw Mr. Laurencel, after my examination of the land, I stated to him I had been mistaken in my impression and description of the place, and in stating that there was a valley between the mining ridge and the sierra Azul.

Cross-examined.

Question. Before you gave your deposition in this case in April, 1857, had you not often been upon the ground hunting, or for other purposes?

Answer. Not on that part of the ground in which the ridge is; that part of the ground in which the depression is, which I mentioned before as separating the mining ridge from the main sierra.

Question. Were you, on your former examination, also mistaken when you said that the creek which separated the mine ridge from the main mountain was called the Capitancillos, and that in fact the mine ridge and the main mountain were so separated by that creek which flowed between them and came out on the plain after passing the Guadalupe mine?

Answer. I don't recollect saying that the Capitancillos divided the main ridge and the mine; if I said so, I was misunderstood. I mean to say, that the Capitancillos creek would have to be crossed in going from the mine to the main mountain in a southwest direction.

Question. By going in about rather a southeast direction from the mine to the main mountain you would also cross the Alamitos creek, would you not?

Answer. By making the course southerly enough you would.

Question. Then I understand you that there is a divide which separates the headwaters of the two creeks—the Capitancillos and the Alamitos—one flowing one way and one the other, and that this divide comes down from the main mountain, and joins with the ridge in which the Almaden mine, the San Antonio mine, and the Guadalupe mine are situated?

Answer. It is a continuous divide until it passes the Almaden mine.

Question. Starting from the Guadalupe mine, or San Antonio mine, and going to the large Encino, on the spur of the sierra Azul, what stream would you cross?

Answer. The Capitancillos.

Question. How far is it, about, from the point of the mine ridge

where the Capitancillos comes around by the Guadalupe mines to the point of the same ridge where the Alamitos creek comes out on the plains?

Answer. About four miles.

Question. Then that ridge of about four miles in length, in which the Almaden, San Antonio and Guadalupe mines are all situated, is only connected with the main sierra at one point by the divide which you have described; is it not so?

Answer. It is more than likely that the length of the ridge is more than four miles. It is connected in the manner indicated by the question, and I consider that the whole ridge is only connected with the main mountain by the little divide, which runs up to the main ridge.

Question. Everywhere else, then, except the divide, the main ridge is separated from the main mountain by the depression through which the two creeks, Alamitos and Capitancillos, take their course?

Answer. It does.

Question. Is not the divide which joins the main sierra to the mining ridge somewhat lower than either of those ridges?

Answer. I do not recollect; it is higher up than I go when hunting.

Question. Is the creek which passes by the Guadalupe and San Antonio mines, and which you call the Capitancillos, a small dry creek from its source to the bend, or is there water in it all the year round from its source to the bend?

Answer. So far as I have been up the stream there has been water running, except last year, which was very dry, and then there was water in the holes.

Question. Are not the hills composing what is called the mine ridge generally very good grazing ground, covered by a fine growth of wild oats, and affording very good pasturage for cattle?

Answer. I think the bigger half is.

Question. And is not the land of the plain, about where the house of Justo Larios stood, and which was afterwards occupied by Grove C. Cook, very dry, gravelly, poor land for pasture, much inferior to the grazing alone the mine ridge? Does not the grass in that quarter perish very soon in the spring, and become unfit for the maintenance of cattle?

Answer. Immediately at the house, and running back along a bench in a southwest direction, it is of the nature mentioned in the question.

Question. Is not the very best pasture on the whole rancho to be had in the mine ridge, near the San Antonio mine?

Answer. I think not.

Question. Does not the Capitancillos creek make a break in the

mine ridge; and does not the land rise again on the other side, and form another ridge, which continues through the rancho of Augustin Narvaez?

Answer. Immediately after the Capitancillos creek passes round the mine ridge near the Guadalupe mine, the land rises again and forms another ridge, some two or three miles in extent, to the westward.

Question. This last ridge which you speak of lying on the western side of the Capitancillos, how is that separate from the Blue mountain?

Answer. From the bend of the Capitancillos, westward, you can drive up the hollow with a buggy until you get to a place where the waters flow both ways, easterly and westerly.

Question. Have you not been in the habit of calling, and hearing other people call, the ridge in which the mines are situated by the names of the low hills or foot-hills, or mine ridge, or lomas, or lomas bajas, or other such names?

Answer. I have been in the habit of calling the ridge the mine ridge; and if anybody asked me where the mine was situated, would say in the low hills or foot-hills forming a part or spur of the Blue mountains.

Question. Who asked you to come here, and who pays your expenses?

Answer. I received a subpœna, and suppose the government pays my expenses as a witness. No one spoke to me about coming; the first I knew of it was when I was served with a subpœna.

Question. The mine ridge, you say, you regard as a spur; what do you consider to be the main sierra?

Answer. The top of the Blue mountain I would call the main ridge. The great Encino is high up on the slope of the main mountain.

Direct resumed.

Question 1. Is there any good grazing land in the valley which lies at the foot of the mountains in which the mine is situated?

Answer. There is some good grazing land; a portion of it is not.

ISAAC BRANHAM.

Sworn to and subscribed before me, this 4th day of September, 1858.

W. H. CHEVERS,
U. S. Commissioner.

Indorsed: Filed September 4th, 1858.
W. H. CHEVERS, *Clerk.*

Deposition of H. C. Melone.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSAT.

SAN FRANCISCO, *September 4th*, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, etc., etc., came H. C. Melone, a witness produced on behalf of the United States in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of said board of commissioners, and was duly sworn and testified as follows.

Present, the U. S. district attorney, and A. P. Crittenden, by Ed. Randolph, for claimant.

Witness sworn on his voir dire.

Questions by Claimant.

Question. Have you any interest in the claim of the pueblo lands of San José.

Answer. I have; I own one-eleventh, after paying the city debt, the expenses of the suit, and deducting one-fourth for the city's interest. I acquired my interest in the year 1851.

(Witness objected to on account of interest, as incompetent, by claimant's counsel.)

Henry C. Melone, being duly sworn in chief, deposes and says: I am the same Henry C. Melone who was examined in this case on or about the 14th of April, 1857. Since my deposition, I have made a particular examination of the ground, and find that the mining ridge is a spur of the Blue mountain, the ridge being continuous, with variations of height, and separating the waters of two streams, which runs in different directions from that point, one passing by the Guadalupe mine, and the other by the New Almaden hacienda, but coming together in the plain. I should judge that the lowest depression in the ridge running into the back ridge must be about the same height as the present mouth of the New Almaden mine.

Cross-examination.

Question. Give a fuller description of the mining ridge; say how far it is from the bend of the Capitancillos to the bend of the Alamitos; say whether this ridge is not connected with the main sierra only at one point, viz: the divide; and whether on each side of that divide it is not separated from the main sierra by the Capitancillos and Alamitos creeks, respectively, and the depressions through which those creeks flow?

Answer. The mine ridge from the point of the hill at the Guadalupe mines to the Almaden mines is seven miles; in my opinion, where it strikes one branch of the Alamitos creek, it is connected only at one point, viz: at the divide where it separates the waters of the Capitancillos and Alamitos creeks. The Capitancillos separates the mining ridge from the main sierra a portion of the way. The Alamitos does not separate the sierra from the mine ridge, as it does not run parallel with the sierra, but goes down into the plain.

Question. How have you been in the habit of designating the range on which the mines are situated, and how have others been in the habit of designating it? Are they not generally designated as the low hills, foot-hills, lomas, lomas bajas, etc.?

Answer. I have generally designated it as the mine hills, and it has been so by the Americans generally, as far as my hearing has extended.

Question. If you are asked where the mine is situated, would you not answer, as you have just heard Mr. Branham say he would, that it was in the low hills or foot-hills of the Blue mountains?

(Objected to, as the witness must answer from his own knowledge, and not as Mr. Branham says.)

Answer. I should say that it was in the range of low hills running out from the Blue mountains.

Question. If you were asked what the sierra was, how would you answer?

Answer. I should say the ridge on which the live-oak is situated, from the mine ridge where the waters separate up to the top of the range, is one continuation of the mountain.

Direct resumed.

Question. Where do you consider the foot of the sierra?

Answer. At the foot of the mine ridge.

H. C. MELONE.

Sworn to and subscribed before me, this 4th September, A. D. 1858.

W. H. CHEVERS,
U. S. Commissioner.

Indorsed: Filed September 4th, 1858.
W. H. CHEVERS, *Clerk.*

Deposition of Leslie C. Bostick.

Leslie C. Bostick being duly sworn on the part of the United States, deposes:

That he is a resident of San José, where he has resided since February, 1850; that he is familiar with the neighborhood of the

land claimed in this case, having very frequently walked, rode, and hunted over it; he knows the situation of the New Almaden and Guadalupe mines; the New Almaden mine is situated in a spur of the Blue mountain, a portion of the mountain itself. You can ride from the mine continuously along the ridge, nearly, if not quite, to the top of Mount Umunhum, without descending any valley, as the ridge is continuous, but zig-zags along.

L. C. BOSTICK.

(No cross-examination.)

Sworn to and subscribed before me, this 4th day of September, A. D. 1858.

W. H. CHEVERS,
U. S. Commissioner.

Indorsed: Filed September 4th, 1858.

W. H. CHEVERS, *Clerk.*

Copy of Deed—Charles Fossat to Johnson, Davison, and Wilson.

Know all men by these presents that I, Charles Fossat, hereby sell to Joseph W. Johnson, John Wilson, Peter Davison, all my right, title, and interest in the following described piece or parcel of land lying and being in the present county of Santa Clara, and State of California, described and bounded as follows, to wit: On the south by a line commencing at a point in the middle of the creek known as the arroyo Seco de los Capitancillos, opposite a sycamore tree marked J, said tree being on or near the northern bank of said arroyo; thence following the meanderings of said creek in an easterly direction two thousand eight hundred yards, more or less, to a point in the middle of said creek, opposite to another sycamore tree marked J; on the east and west by two lines running due north and south, and beginning, respectively, to the sycamore tree marked, respectively, J and J; and on the north by a line running along the upper ridge of the hills called Cordillera de los Capitancillos.

The condition of the above sale is the sum of two hundred dollars paid to the party of the first part by the party of the second part, the receipt whereof is hereby acknowledged. And the said Charles Fossat binds himself, his heirs, executors, and administrators, or assigns, unto the said Joseph W. Johnson, John Wilson, and Peter Davison, their heirs, executors, administrators, or assigns, to make and deliver unto the said J. W. Johnson, John Wilson, and Peter Davison, upon demand thereof, within a reasonable time after the confirmation of the title to said land by the United States board of land commissioners, a good and sufficient title to and conveyance of the said above described parcel of land in fee simple, with proper covenants.

In witness whereof, I have set my hand and affixed my seal on this 30th day of September, A. D. 1853.

CHARLES FOSSAT, [SEAL.]
By HENRY LAURENCEL,
His Attorney in fact.

Witness: WM. AKENHEAD.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this 30th day of September, A. D. 1853, personally came before me, recorder in and for the county aforesaid, Henry Laurencel, (attorney in fact of Charles Fossat,) to me personally known to be the person described in and who executed the foregoing instrument of writing, who acknowledged to me that he executed the same freely and voluntarily, (as the attorney in fact of Charles Fossat,) for the uses and purposes therein mentioned.

Given under my hand and private seal (having no seal of office yet provided) the day and year last before written.

J. M. MURPHY,
[L. S.] *County Recorder.*
By F. LEWIS, *Deputy.*

Filed for record at 12 o'clock m., September 30th, A. D. 1853.
J. M. MURPHY, *Recorder.*
By F. LEWIS, *Deputy.*

Recorded by—
S. A. CLARK, *Recorder.*

RECORDER'S OFFICE,
County of Santa Clara, California.

I hereby certify that the foregoing on pages 1 and 2 of this is a full, true, and correct copy of an instrument of record in this office, recorded in book F of deeds, on pages 452 and 453.

Given under my hand and official seal, at the city of San José, this 2d day of September, A. D. 1856. *Given under my hand and official seal.*
[SEAL.]

S. A. CLARK,
County Recorder.

Indorsed: Filed September 8th, 1858.
W. H. CHEVERS, *Clerk.*

Copy of Deed—Charles Fossat to Isaac Foster.

Know all men by these presents that I, Charles Fossat, of the State of California, by my attorney in fact, Henry Laurencel, of the county of Santa Clara, State of California, for and in consideration of the sum of five hundred dollars in hand paid, the receipt of which I do hereby acknowledge, have sold, granted, bargained, and conveyed, and by these presents do hereby sell, grant,

bargain, and convey unto Isaac Foster, of the county of Santa Clara, and State of California, his heirs and assigns, all my interest, claim, and title in and to that parcel of land, containing about forty acres, more or less, and situated in the county of Santa Clara, State of California, it being a portion of the northeast corner of the rancho de los Capitancillos, which was granted to Justo Larios by Governor Alvarado on the 1st day of August, 1842, said parcel of land being bounded and described as follows, to wit:

[*For plat see original, page* 173.]

Bounded on the south by a line tangent to the skirts of the two low hills or mounds situated on the south bank of the arroyo Seco de los Alamitos, and immediately after the place called Puertezuelo of said rancho, until said line strikes the bend of said arroyo, where a stake has been placed; thence along the middle of the bed of said arroyo to a point of rock where a stake has been placed; thence northerly up the ridge of the mountains, and in a circular form, and including only the slope of the descending waters, towards the centre of the small cañon, to a tree marked, which is the corner of the three ranchos de los Capitancillos, de Narvaez, and de Bernal; thence southerly and in a circular form, always following the ridge of the mountains and including only the slope of the descending waters, towards the centre of the small cañon, down to a point of rock where a stake has been placed; thence across the arroyo Seco to the top of the first or highest mound or low hill; thence in a direct and the shortest line to the southern boundary: to have and to hold the said described parcel of land, with all and singular the privileges and appurtenances thereto belonging, unto the said Isaac Foster, his heirs and assigns forever, and I, the said Charles Fossat, myself, my heirs, executors, or administrators, will forever warrant and defend the title to the said parcel of land hereby conveyed unto the said Isaac Foster, his heirs or assigns, against the lawful claim or claims of any person or persons, except against the government of the United States.

In witness whereof, I have hereunto set my hand and seal, by my attorney in fact, this eleventh day of April, A. D. one thousand eight hundred and fifty-three.

CHARLES FOSSAT, [SEAL.]
By HENRY LAURENCEL,
His Attorney in fact.

Signed, sealed, and delivered in presence of—
R. B. BUCKNER,
EUGENE AVERY.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this 11th day of April, A. D. 1853, personally came before me, recorder in and for said county, Henry Laurencel, personally known to me to be the person described in and who executed the foregoing instrument of writing, and who acknowledged to me that he executed the same, as attorney in fact of Charles Fossat, freely and voluntarily, and for the uses and purposes therein mentioned.

Given under my hand and private seal, (there being no official seal provided.)

[SEAL.]

J. M. MURPHY,
County Recorder.
By S. O. HOUGHTON,
Deputy.

Filed for record at 11½ o'cl'k a. m., April 11th, A. D. 1853.
J. M. MURPHY, *Recorder.*
By S. O. HOUGHTON, *Deputy.*

RECORDER'S OFFICE,
County of Santa Clara, California.

I hereby certify that the foregoing, on pages 1, 2, and 3 of this, is a full, true, and correct copy of an instrument of record in this office, recorded in book F of deeds, on pages 84 and 85. The words "of writing" erased from the 17th line from the top of the 3d page, the same having been incorrectly copied from the record.

Given under my hand and official seal, at the city of San José, this 2d day of September, A. D. 1856.

[SEAL.]

S. A. CLARK,
County Recorder.

Endorsed: Filed September 8th, 1858.
W. H. CHEVERS, *Clerk.*

Deposition of A. W. Von Schmidt.

United States District Court, northern district of California.

THE UNITED STATES }
vs.
CHARLES FOSSAT. }

SAN FRANCISCO, *Sept. 7th*, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., came A. W. Von Schmidt, a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, P. Della Torre, esq., for the U. S.; and A. P. Crittenden, for claimant.

Questions by U. S. Attorney.

Question 1. What is your name, residence, and occupation?

Answer. A. W. Von Schmidt; San Francisco; civil engineer and surveyor; age 35.

Question 2. Has your business made you familiar with the location and survey of ranchos under Spanish grants?

Answer. Yes, sir; I have been in the employ of the U. S. surveyor gen'l in the capacity of deputy surveyor, during which time I have made a large number of surveys of Spanish grants.

Question 3. Have you ever examined the land claimed in this case, and when?

Answer. I have made an examination within the last week.

Question 4. Did you visit the ridge in which the New Almaden mine is situated?

Answer. Yes, sir.

Question 5. Is or is not that ridge a portion of the sierra? and state your reasons for whatever opinion you may express.

Answer. I consider it a portion of the sierra, for the reason that it is connected by a continuous spur making down from the mountain, marked on the map "Umunhum;" which spur forms the divide between the creeks Arroyo Seco and Arroyo Alamitos. The height I found in the lowest place in that ridge connecting across is 1,315 feet above the level of the sea by observation made by the barometer. From Mine hill, as marked on the map, the different spurs of the mountains continue to descend until they reach the plain in broken spurs. These are my reasons for considering it a portion of the main range of mountains.

Question 6. Look upon the map marked "Exhibit A. P. C.," and point out what you consider the base of the sierra.

(Question objected to.)

Answer. I consider the base of the sierra near the red line drawn at the foot of said hills or sierra, as represented on said map, at which point it joins with the plain.

Question 7. What papers had you with you, when you made your examination?

Answer. I had a copy of "Exhibit A. P. C," or Lewis's map, which I compared with the original and found to be correct; a printed copy of the transcript in this case used by the Supreme Court of the U. S., at its last term; a printed copy of the claimant's brief in the Supreme Court in this case, containing two diseños, one of the rancho of Justo Larios, and the other of the rancho of Berreyesa; and a printed copy of some of the testimony in this case.

Question 8. Did you find that the diseño in the Justo Larios case gives a correct idea of the land as it exists in nature?

Answer. Yes; I found that the arroyos, as laid down on the diseño, and the point where it entered the foot-hills, gives a very good idea of the country as it actually exists; also, the range of hills as laid down and marked "Sierra del Encino," all of which is in keeping with the sketch or diseño.

Question 9. Did you find the Berreyesa diseño correct?

Answer. I did not, for the reason that there is no valley as laid down on that diseño, actually existing at the foot of Sierra Azul, marked on that diseño; further, the creek Arroyo de los Alamitos, as represented on this diseño, is wrong in its course and direction; that is, that portion from the western portion, to where it passes between the two mountains or hills, as represented on the diseño; said creek comes in from the south, instead of the west.

Question 10. At what point, as shown on "Exhibit A. P. C.," do the two water-courses laid down on the Justo Larios diseño, as the arroyo de los Capitancillos, and the arroyo Seco, respectively, leave the mountains and enter upon the cañada?

Answer. The arroyo Seco leaves the mountains at a point marked on said map at or near station 44. The arroyo de los Capitancillos, called the arroyo de los Alamitos at that point, leaves the mountain range a short distance above the house of Mr. Walkinshaw, probably a quarter of a mile.

Question 11. Does or does not the diseño of Justo Larios sufficiently explain itself to enable a location from natural objects represented thereon?

Answer. Yes; I do not consider that there would be any difficulty in making the location according to the diseño?

Question 12. Where would you locate on "Exhibit A. P. C.," the southern boundary of the Justo Larios rancho?

Answer. I would locate it at the eastern foot of the sierra where it joins the plain, about or near the red line on said map.

Question 13. On the same exhibit which would you call the headwaters of the arroyo Seco, and the arroyo de los Alamitos, respectively?

Answer. I would call the headwaters of the arroyo Seco west of the mountain represented on said map as Umunhum, near which point it has its source in the main range. That of the arroyo de los Alamitos heads to the southwest of Mount Bache, as represented on said map.

Question 14. Look at Exhibit marked "W. H. C. No. 1," annexed to deposition of John D. Hoffman, being a sketch of the land claimed in this case, and some of the adjacent country, and particularly observe an oak tree shown prominently on one of the ridges, and state whether or not you consider its apparent size

in the picture in keeping and proportion with the rest of the sketch.

Answer. I consider it altogether too large in proportion according to the rules of perspective, and its actual appearance on the ground. Further, the double peak to the right of the tree is altogether too low to what the appearance would be on the ground, and the ridge which the tree stands on is too high.

Cross-examination.

Question 1. Have you any other reasons than those stated in your answer to question five for saying that the ridge in which the New Almaden mine is situated is a portion of the sierra?

Answer. I can state several other reasons; from my experience in having surveyed in mountainous portions of the State, which are the continuous high peaks, spurs, and deep ravines, and the general appearance of the country, broken and gradually falling towards the plain, which is the case in all mountains where they descend from the main ridge into the plains, and the general appearance of the topography of the country.

Question 2. In what sense do you mean that this ridge is a part of the sierra?

Answer. By being connected with the ridge, which I formerly stated connecting that portion of Mine hill with the mountain Umunhum, by following which ridge that point, Umunhum, could be reached without descending lower than the point marked on the map 1,349 feet, but which I found by the barometer to be 1,315 feet.

Question 3. That connecting ridge is narrow, is it not, compared with the whole length of the mine ridge?

Answer. Yes.

Question 4. And except where that connection exists the mine ridge is separated, is it not, by ravines and streams, from the main sierra?

Answer. Yes.

Question 5. If that connection did not exist, would you still be of the opinion that the ridge was a part of the sierra for the other reasons you have given?

Answer. I would, for the reason that I have frequently found far back in the Sierra Nevada mountains, mountains rising isolated by themselves, not being connected even with a ridge to the main sierra.

Question 6. Do you mean to say that in such cases you would regard such isolated mountains as parts of the Sierra Nevada in the same sense in which this mine ridge is a part of the sierra?

Answer. I would where the mountains are adjacent, as it is in this case, being a portion or a part of the main mountain. All

mountains must have some place which we should designate as the foot of the mountain.

Question 7. For the same reason would you consider all foot-hills connected with or lying near the main range as a part of the range?

Answer. I would if connected with the main range, or lying adjacent, as previously stated.

Question 8. What is the elevation of the plain of the rancho los Capitancillos above the sea?

Answer. I do not know; I did not take that observation.

Question 9. Why do you consider the red line drawn at the foot of the mine ridge on map "A. P. C," as being the base, or near the base of the sierra?

Answer. For the reason that at that point, or near where that line is drawn on the map, the hills join with the plain.

Question 10. Did you mean to express that opinion in view of your examination of the country, and of the papers connected with the grant in this case, or merely because of the opinion you have expressed that the mine ridge was a part of the sierra?

Answer. Both.

Question 11. Do you speak and read the Spanish language?

Answer. Very imperfectly.

Question 12. Have you read all the papers referred to in your answer to question 7?

Answer. I have only read such portions as referred to the boundaries, and the decree in the land commission, and the opinion of Judge Hoffman; the other portions I merely glanced over.

Question 13. Have you read the original grants to Justo Larios and Berreyesa?

Answer. I have read that portion which is referred to in the printed copy of the brief, and of the transcript to which I have referred.

Question 14. Please to state now, as nearly as you can from recollection, the terms of that portion of the grant to Justo Larios which fixes his eastern boundary.

(Question objected to, because it is not requisite that witness should retain in his memory the contents of any instrument which has been submitted to him, and because in this case he had copies of the papers with him on the ground which are now present on this examination.)

Answer. I don't know that I can give the exact language, as my time for examination was short; I think it commences near the house of Larios, and passes at the eastern edge of the hill, marked on the map as "Loma," extending southward to the sierra.

Question 15. When you go upon the ground for the purpose of locating a tract of land according to calls for natural objects, what is your first step?

Answer. My first step would be to make an examination of the grant, to satisfy myself in regard to the natural objects called for; then proceed with the survey, taking some noted point or object as a starting point, if no such point or object has been called for as a starting point, and make the survey to conform with the decree, the diseño, and the instructions of the surveyor general.

Question 16. In a country with which you are not acquainted, and when you did not know the names of the natural objects referred to in the instrument which described the land, how would you identify those objects?

Answer. By examination and reference to the papers that I might be provided with by the surveyor general.

Question 17. Would it not occur to you to inquire of the people of the country where the natural objects were which were called for in the description of the land?

Answer. It certainly would occur to me to make such inquiry, provided I could get such information from parties not interested either in the grant or as settlers, as past experience has proved.

Question 18. Names are arbitrary, are they not; and if a grant or deed were put into your hands which called for streams and hills by name in a country where you were wholly unacquainted with the names of natural objects, how else could you find what objects were intended, what hills and streams were intended, except by inquiries of those who knew the name and localities?

Answer. In that case I suppose I would have to inquire of some one, and, if possible, of those not interested, if no other information was in my possession.

Question 19. In locating a grant, is it not the duty of the surveyor to be governed by the intention of the grantor, as expressed in the grant; and is not the location of the land the mere identification on the ground of the objects called for in the grant, and the making of the lines called for according to that intention?

Answer. The surveyor is governed by the decree, and not by the intention; the survey is for the purpose of identifying the land according to the decree, and not his intention.

Question 20. Do you mean to say that you are not to be entirely governed by the intention expressed in the decree?

Answer. If that intention is expressed in the decree, the survey would be made in conformity with it.

Question 21. The grant to Justo Larios calls for the sierra as the southern boundary of the grant, does it not?

Answer. It does.

Question 22. The diseño of Justo Larios referred to in the grant shows on the south a range of mountains marked "Sierra del Encino," does it not?

Answer. It does.

Question 23. Do you know any range of mountains in that section of country which is called "Sierra del Encino?"

Answer. Not of my own knowledge.

Question 24. When you go upon the ground for the purpose of identifying that sierra which is the southern boundary, how would you ascertain it—by inquiry of the people of the country, or merely by aid of your own reason, in finding out what should have been the sierra?

Answer. In this case I should use my own judgment, having the diseño and the calls of the grant before me.

Question 25. Would you make no inquiry for the sierra or the "Sierra del Encino?"

Answer. I should not think it necessary to make the location of the grant.

Question 26. In determining where the base of the sierra or Sierra del Encino is, you would be governed, would you not, by the opinion you have expressed, that the mine ridge was a part of the sierra, and for that reason would locate the southern line of the grant about where the red line is on map "A. P. C.?"

Answer. I would.

Question 27. Suppose the mine ridge was a portion of the sierra, but it appeared from the papers that the grantor did not intend so to consider it; would you still locate that southern line in the same way, or would you be governed by the intention of the grantor, and not by the fact?

Answer. I would be governed by the fact, as called for by the papers in the case.

Question 28. Look at the diseño of Berreyesa, and state what object on the ground this range of hills was intended to represent; I mean the one above the words "Lomas Bajas" and the letter "S."

Answer. I cannot tell, for the reason that there is no such valley as represented in the map beyond that range.

Question 29. Do you mean to say that you have no opinion as to what that range was intended to represent?

Answer. I do; there is no such place in existence on the ground.

Question 30. Do you know where that point is on the ground which is intended by the point of junction on this diseño of the two streams marked arroyo de los Alamitos and arroyo Seco?

Answer. I do.

Question 31. Is there not on the ground a range of hills corresponding in position in reference to that point and to the stream marked arroyo Seco, with the range delineated on this diseño as the "Lomas bajas para la parte del plan de pueblo?"

Answer. I saw a range answering to the description, as marked on said diseño.

Question 32. But there is no such valley, is there, between that range and the arroyo Seco, as is represented in this diseño?

Answer. I do not know, as I did not examine that portion of the ranch.

Question 33. Is there not, on the ground opposite the junction of the arroyo de los Alamitos and the arroyo Seco, and southward from that junction, a hill or lomita standing alone in the plain?

Answer. There is.

Question 34. Now, if from that point of junction of the arroyo de los Alamitos and the arroyo Seco you draw a straight line in a southerly direction, passing by the eastern base of that hill or lomita in the plain, what range or ridge will you first strike?

Answer. The foot of the sierra.

Question 35. Won't you strike first the ridge in which the Almaden mine is situated; and if you prolong that line, will you not cross that ridge and strike the arroyo de los Alamitos?

Answer. Yes.

Question 36. Now look at the dotted line on the diseño of Berreyesa, drawn southwardly from the junction of the arroyo de los Alamitos and the arroyo Seco, and say whether that dotted line does not exactly correspond with the one just spoken of, and whether it does not terminate at the arroyo de los Alamitos or the base of the mountain on the southern bank of the arroyo.

Answer. So far as the direction of the dotted line goes it is correct, where it strikes that portion of the creek.

Question 37. What point on the ground corresponds with the point on the diseño of Berreyesa, where the dotted line intersects the stream called the arroyo de los Alamitos?

Answer. Not any point, that I know of. The whole of that portion is wrong. From the mouth of the creek, passing the eastern edge of the loma, to the foot of the sierra, is correct.

Question 38. Does not that point of intersection of the dotted line, on the diseño of Berreyesa, with the stream called the arroyo de los Alamitos correspond with the point in Lewis's map marked Station 65?

Answer. Only in course; but not in distance or in any other respect.

Question 39. What other stream is there on the ground north of the summit of the sierra which could be intersected by a line drawn southwardly from the junction of the arroyo Seco and the arroyo de los Alamitos, passing by the eastern base of the low hill in the plain, except the arroyo de los Alamitos; and if there is none, must not Station 65, on map "A. P. C.," of necessity be identical with the point of intersection on Berreyesa's diseño of the dotted line and the arroyo de los Alamitos?

Answer. I know of no other arroyo, nor do I know that said point No. 65 on Lewis's map is or is not the place intended to be intersected by the dotted line represented on the diseño.

Question 40. How would you set to work on the ground to find the point of intersection of the dotted line on Berreyesa's diseño with the stream called there arroyo de los Alamitos?

Answer. With Berreyesa's diseño I don't think I could find the point at all.

Question 41. Could you not find that point of intersection on the ground, if you were instructed that that dotted line was a straight line, to be drawn from the junction of the two creeks southwardly, passing by the eastern base of the low hill on the plain, and prolonged until it struck the arroyo de los Alamitos?

Answer. In accordance with Lewis's map, a straight line drawn from the junction of the two creeks southwardly far enough, would intersect the Alamitos at about Station No. 65.

Question 42. Would that be the point represented by the junction of the dotted line and the arroyo de los Alamitos on the diseño of Berreyesa?

Answer. It would not; for the reason, as I have before stated, that that portion of the diseño is wrong.

Question 43. Please to explain why it is difficult or impossible, in your judgment, to find on the ground the point of intersection of the stream called the arroyo de los Alamitos by straight line, of which you have two points fixed, viz: the junction of the creeks and the eastern base of the low hill, merely for the reason that the topography of the country in the vicinity of the arroyo de los Alamitos is incorrectly delineated, and the couse of the stream not correctly laid down?

Answer. I have not stated that such line could not be produced on the ground; but if produced, would not be in keeping with the sketch and the actual nature of the ground in fact.

Question 44. On this diseño of Berreyesa, where would you locate the hacienda of the Almaden mine?

Answer. I could not locate it at all on that diseño.

Question 45. In fact, it is somewhere on the arroyo de los Alamitos, above its junction with the arroyo Seco, is it not—and in the vicinity of the first bend above that junction?

Answer. It is; some distance above the first bend.

Question 46. From your knowledge of the course of the arroyo de los Alamitos, would you not say that the hacienda of the Almaden mine was situated on the stream called the arroyo de los Alamitos, on Berreyesa's diseño, at a point east of and opposite the eastern end of the hills marked on that diseño "Lomas Bajas?"

Answer. I would not.

Question 47. Do you not rather think that this valley, which gives you so much difficulty, and which lies between the Lomas Bajas and sierra Azul on Berreyesa's diseño, really represents, and was intended to represent, the gorge or ravine of the arroyo de los

Alamitos, above the hacienda of the Almaden mine, and that it was purposely exaggerated on that diseño, and made much broader than it is in nature, in order to make it appear with the more clearness that the western line of Berreyesa, represented in the diseño by that dotted line, was intended to cross the ridge in which the Almaden mine is situated, and across the arroyo Alamitos itself, and terminate at the base of the main sierra, as the southern bank of the stream?

Answer. I do not.

Question 48. If that range of hills over the words "lomas bajas," and the letter "S," in the diseño of Berreysa, does not represent the ridge in which the Almaden mine is situated, can you conceive what it was intended to represent?

Answer. I cannot.

Question 49. According to your idea as to what constitutes a portion of the sierra, would you say, that the hills marked "pueblo hills," on the map "A. P. C.," were a part of the sierra, taking it for granted that their topography and their connection with the main sierra are correctly represented on the map?

Answer. If there was a high range of mountains or a spur connecting with the main sierra, I should consider them a part of said sierra, although the name may be changed to hills, and generally known by that name.

(Answer objected to as not responsive, and question repeated.)

Answer. Assuming the topography to be correct, I should call the pueblo hills a part of the sierra, as represented on map "A. P. C."

Question 50. Their having a different name would not make them, in your judgment, any the less a part of the sierra, would it?

Answer. It would not.

Question 51. Look at the diseño of Justo Larios, and say whether you find that to be anything like a correct representation of the land granted to Justo Larios, and of natural objects on the land and in its vicinity?

Answer. I consider it very accurate in its general outline, with the exception that the creek in Lewis's map, called arroyo Seco, intersecting with that of arroyo de los Alamitos, is not put down; also the "Lindero del Sr. Berreyesa," is not laid down in the same position as laid down in the diseño of Berreyesa; nor is the "loma" put down near Larios' house. In other respects it is correct.

Question 52. From the inaccuracy of that sketch, would you not suppose that it was drawn by a man who never had seen the land?

Answer. This is a very difficult question to answer; for the rea-

son that most of the diseños are very roughly drawn, and I could not form any judgment from that fact whether the party had ever seen the place or not.

Question 53. You have said that you do not consider that there would be any difficulty in making the location according to the diseño; you mean, do you not, looking to the diseño alone, and assuming it to be correct, and ascertaining where the Sierra del Encino was from the diseño itself, and not by inquiry, for the range bearing that name?

Answer. I mean, in making said location, to have reference to the diseño so far *far* as general guide by the natural boundaries as represented on said diseño, but more particularly to be governed by the decree in the case.

Question 54. The question put to you on the direct examination was, whether or not that diseño of Justo Larios sufficiently explained itself to enable a location to be made from natural objects represented thereon, and your answer was as I have just stated; neither the question nor answer referred to any decree. Why do you now refer to a decree? and the previous question is repeated.

Answer. My answer is, the location, taking the diseño as a guide, can be located without reference to any further information or decree on the subject. The reason I referred to the decree was, that in making all final surveys, the surveyor is always referred by the surveyor general, in his instructions, to the decree.

Question 55. You mean that you can locate it by the diseño, taking the diseño to be correct, do you not?

Answer. I do.

Question 56. Now, if, when you undertook to locate the land according to the diseño, you should ascertain that the Sierra del Encino was the name of the portion of the main range of mountains to the south of the mine ridge, and not the mine ridge itself, you would encounter difficulty, would you not?

(Objected to, because it supposes a state of facts contradictory to the diseño of which the witness is speaking.)

Answer. Not necessarily, for the reason that I should run up to the creek where it comes out from the mountains; thence along the northern foot of the sierra until I reached the other arroyo; then down said arroyo to the place of beginning.

Question 57. You would run up, would you not, till you got to the Sierra del Encino, then along the base of the Sierra del Encino, wherever it might be, though it might, in fact, be different from what you fancy it?

Answer. I would run, as I stated above, to the foot of the sierra, as called for, regardless of the name of the mountain.

Question 58. How would you know what sierra was intended, or where the foot of the sierra was, unless from the name of the mountain?

Answer. I would make the examination, as I have before stated, by reference to the diseño, and to the papers in the case; then make the location in conformity to my own judgment as to what was intended by said diseño and papers, without any reference to other parties.

Question 59. To find the base of the sierra, you would go south from the arroyo de los Capitancillos, would you not, and run the southern line of the grant at the base of the first hills or mountains, and without stopping to inquire its name, or whether there might not be another range still farther to the south, which was known by the name of Sierra del Encino?

Answer. I would, for the reason that I consider the two streams coming from the same range of hills or mountains, and that I do not consider there are any two separate distinct ranges.

Question 60. Suppose the southern line called for was described as a line running east and west, through a tree known as "El Encino," would you take the first oak you came to, or would you ascertain, by inquiry, where that oak was which was called El Encino?

Answer. I would first ascertain where that identical oak called for was, and then should run accordingly.

Question 61. Why would you not do as much for a mountain as for a tree?

Answer. For the reason that there are a great many oaks on those several ridges, and that there is but one foot to the mountain or sierra.

Question 62. That portion of the diseño of Berreyesa which lies west of the dotted line ought to correspond, ought it not, with the eastern portion of the diseño of Justo Larios; and if they be correct, the same natural objects should be delineated on both, ought they not?

Answer. To make them correspond in all particulars, they should be the same; but, in many cases, the lines conflict one with the other, and should not always be taken for granted that one has any right over the other, until it shall have first been tested by the proper courts.

Question 63. In order to determine the eastern boundary of the Larios grant, must you not necessarily refer to the grant and diseño of Berreyesa?

Answer. To that portion of the grant which conflicts with Larios, as between the junction of the creek and the foot of the sierra, being the eastern boundary of Larios.

(Question and answer both objected to, as asking witness's opinion with regard to a matter which belongs to the construction of the court.)

Question 64. What conflict is there to which you refer, inas-

much as the grant to Larios declares that his eastern boundary is the western boundary of Berreyesa?

(Same objection as last.)

Answer. The conflict that I referred to was in regard to the diseños, and not otherwise.

Question 65. In your judgment, and upon your knowledge of this case in that conflict, which is to govern or to have the most weight in determining the location of that dividing line, the diseño of Berreyesa or that of Justo Larios?

(Objected to because not responsive to anything which was inquired of on the direct examination, and because the diseño of Justo Larios does not affect to lay down that line which is represented on the diseño of Berreyesa.)

Answer. I think the diseño of Berreyesa to the foot of the sierra.

Question 66. What object is there on the diseño of Larios which corresponds with the range above the words "Lomas Bajas" and the letter "S" on the diseño of Berreyesa?

Answer. I don't know.

Question 67. Is Mr. John D. Hoffman an artist, or a good and correct draughtsman?

Answer. I believe he has that reputation.

Question 68. In the question touching the correctness of the drawing of this Exhibit W. H. H., "No. 1," annexed to the deposition of John D. Hoffman, do you consider your own opinion any more reliable than that of Mr. Hoffman?

Answer. I do, so far as regards the size of objects at long distances, for the reason that Mr. Hoffman's sight is known to be very bad, or otherwise known to be near-sighted. He uses glasses in making observations which may cause the object to appear to him much larger or much smaller. I am not in the habit of using glasses, my eyes being excellent, and can see the object in its natural size.

Question 69. Please explain how the use of glasses could affect the relative dimensions of objects.

Answer. On the same principle as using a spy-glass to see any great distance.

Question 70. If a glass magnifies one object at a given distance, will it not equally magnify other objects at the same distance? If Mr. Hoffman's glasses magnified the tree standing on the mountain, did they not to the same extent magnify the mountain on which the tree stood?

Answer. The principle is perfectly correct and well illustrated; but the difficulty is that the tree is drawn out of proportion, not only in regard to the mountain, but to trees a long distance this side, which are represented on the ridge to be very small, many of which are large in size; and large groves of oaks forming clusters

should have been represented in proper size, so as to be in keeping with the whole picture.

Question 71. Were you ever at that tree, and do you know how high it is?

Answer. I never was at that tree, nor do I know its height, but what I do know is, that it is drawn out of proportion as represented on this picture; and in making a sketch by hand, there is no certainty of its being an exact copy of the section of country or heights of trees or mountains which it is intended to represent; that all sketches made by hand are more or less subject to error.

Question 72. Is not the judgment of a person who looks at the picture, as much liable to error as that of the painter?

Answer. Not that of a person who is familiar with that kind of work, and is an artist himself, as it often happens that one artist will point out to the other something wrong which may be in the drawing or in the perspective, or in the coloring of the picture or painting.

Question 73. Then if you had painted this picture and Mr. Hoffman had pointed out an error in it, the probability would be that he would be right, and you wrong, though he might have seen the country but once, and that casually, and not from the point from which the view was taken, while you might have made it a matter of close study and attention for some time. Is that so?

Answer. I don't think it is a comparative case, for the reason that I have already stated. Mr. Hoffman, although a good artist, is short-sighted.

Question 74. From what point of view was this sketch taken? please designate it on map "A. P. C."

Answer. I think it was taken near the hill on said map near the arroyo Seco, opposite to Station 28, but I do not know positively, as I was not with him when the sketch was taken.

Question 75. How often have you ever looked at that tree from that point?

Answer. I don't know that I have looked at that tree from that point at all; but on returning from the mine, after having been on the spur of the mountain, and knowing where to look for the tree, I looked at it from different places along the road, to compare more particularly the map made by Mr. Lewis with the general appearance of the country, and it struck me at the time that the tree as represented on this drawing is altogether too large, and the mountain to the right of it is not high enough; otherwise the picture represents the country very well.

Question 76. Was it only on this occasion that you saw the tree?

Answer. This only, on that trip.

Question 77. Did you see it against the hills in the back-ground, or as represented in this picture?

Answer. Both.

Question 78. Do you know what is the elevation of the place where this tree stands, and of the hill to the right?

Answer. I do not.

Question 79. Could you form no estimate of the elevation of the place where this tree stands?

Answer. I did not make any examination, or estimate the height either of the tree, or the mountain to its right.

Direct resumed.

Question 1. May not a grant, particularly when accompanied by a diseño, give such an idea of natural objects, as to enable a location of the land granted without the necessity of making verbal inquiries of any person?

Answer. It may.

Question 2. Where the grant refers to a diseño, do you not, in making a location, refer to the diseño as well as to the grant?

Answer. I do.

Question 3. Does not the Justo Larios grant refer to a diseño?

Answer. It does.

Question 4. On the Berreyesa diseño, what is the relative position of the Lomita to the point of the arroyo, and to the range marked Sierra Azul?

Answer. A little less than one-half; very nearly midway between these two points.

Question 5. On "Exhibit A. P. C.," between what point and the angles of the creeks is the loma laid down as midway?

Answer. Very nearly the same as represented on the diseño of Berreyesa, which is about midway between the angle of the creeks, and what I consider the base of the sierra.

Cross-examination resumed.

Question. Who was with you when you made the examination of the country?

Answer. Mr. Eastman, who went down for the purpose of seeing the country on my invitation; also Mr. Day accompanied me from the mine up on the dividing ridge, and back to the mine.

Direct resumed.

Question. Have you a copy of the instructions which you received in this case? if so, please append them to this deposition.

Answer. I have, and so append them, marked J. B. W.

(Question and answer objected to on the grounds that it relates to nothing drawn out on the cross-examination, and that the directions which may have been given to the witness by the district attorney are inadmissible as evidence, being the declarations of the party who offers them in evidence made for the occasion.)

Cross-examination resumed.

Question 1. What did you receive, and what are you to receive for your services in making this examination, and for your attendance here as a witness, and by whom has it been paid, or by whom is it to be paid?

Answer. I have not received a cent, nor was there any understanding that I was to receive anything previous to my going, or since my return.

Question 2. Do you mean to say that you have given your time and your professional services in this matter gratuitously, and at your own expense, without any promise or expectation of compensation or reimbursement?

Answer. I mean to say no such thing in answering the previous question; I now state what I then stated, that I had no understanding, either directly or indirectly, as to compensation for my services previous to my departure, or since my return; but do expect that all my expenses and reasonable compensation will be allowed for the time I was absent; and that is all I do expect.

Question 3. From whom do you expect that?

Answer. From the paymaster of this department.

Question 4. Who employed you?

Answer. Col. Della Torre gave me that letter, and requested me to go down and look at the country.

Question 5. Had you no conversation with him prior to the receipt of this letter?

Answer. I had.

Question 6. What did he inform you he wished to do?

Answer. He wished me to see how the country agreed with the diseños of Berreyesa and Larios; also to see how the survey of W. J. Lewis corresponded with the general topography of the country. He then requested me to go down immediately, and gave me that letter, which was all that transpired at that time.

Question 7. Who sent for you?

Answer. I believe Col. Della Torre sent for me.

Question 8. Do you know at whose suggestion.

Answer. I do not.

Question 9. Were you aware, before you made this examination, of the positions taken on behalf of the United States in this case, and of the opinions which had been expressed by Wm. J. Lewis and Col. Ransom, or Mr. Mathieson, as witnesses in the case on behalf of the United States?

Answer. No, not a word.

Question 10. Who furnished you with all those papers and printed documents referred to in answer to question seven?

Answer. Col. Della Torre.

Question 11. One of those printed pamphlets contained the depositions of Lewis, Ransom, Mathieson and others, did it not?

Answer. I recollect that of Lewis, which I saw the heading of; I did not read it, as I had so little time.

Question 12. Do you know any reason why those written instructions to you should have been so carefully prepared, and why you were specially informed that you were to exercise your own judgment?

Answer. I do not.

Question 13. Did anything occur in your conversations with the district attorney, which could have rendered it necessary to make this reference to right and justice; and was there any special reason within your knowledge, why you should have been told to exercise your own judgment, totally irrespective of all considerations as to who may be benefited or injured by the result?

Answer. Just before I was leaving, I requested Col. Della Torre to give me a memorandum of the examinations he wished me to make. He immediately wrote those few lines and handed the letter to me; I bid him good day and departed.

Question 14. Is there anything in that letter which specifies the examinations you were to make?

Answer. He states in his letter that he had given me the points on which he desired me to make an examination, which were in regard to the examination of the correctness of the diseños and the map of Lewis.

Question 15. Have you had any conversation with parties connected with or in the employ of the New Almaden Company, in relation to this examination or in relation to this tract of land?

Answer. I told Mr. Day that I was making an examination of the survey of Mr. Lewis. That is all I said to him on the subject, as far as this sase is concerned.

A. W. VON SCHMIDT.

Examination closed.

Sworn to and subscribed before me, September 7th, A. D. 1858.

W. H. CHEVERS,
U. S. Commissioner.

Exhibit J. B. W., annexed to the Deposition of A. W. Von Schmidt, Sept. 7, 1858.

SEPTEMBER 1*st*, 1858.

DEAR SIR: Having informed you of the points upon which I desire information, to be used in the case of the United States vs. C. Fossatt, for the Capitancillos ranch, I have now to request that you will proceed at once about the business.

Please give it immediate despatch; I wish you to exercise your own judgment, both in observations and deductions, so that right

and justice may be done, totally irrespective of all considerations as to who may be benefited or injured by the result.

Resp'y yours, etc.,

P. DELLA TORRE,
U. S. Attorney.

To A. W. Von Schmidt, Esq.,
Deputy Surveyor, San Francisco.

Endorsed: Filed September 7th, 1858.
W. H. CHEVERS, *Clerk.*

Opinion by Judge Ogden Hoffman.

U. S. District Court.

The United States vs. Charles Fossatt. } No. 132.

October 4, 1858.

When this case was first submitted to this court on appeal from the board of land commissioners it was considered that the four boundaries of the tract were indicated with reasonable certainty by the grant and accompanying diseño. It did not escape the observation of the court that only three of those boundaries were designated in the grant, viz: the southern, the western, and the eastern; but it was thought that the description of the tract in the decree of concession as the "Cañada de los Capitancillos," and the delineation on the diseño of the two ranges of hills within which it was contained, sufficiently indicated the location of the northern boundary, the mention of which was omitted in the grant.

The court was confirmed in this view by the representation of the petitioner on the diseño that the tract delineated upon it was of the extent of one league, a little more or less, indicating, as it seemed, that he solicited not a specified quantity, but a particular tract, the estimated area of which he declared to the governor; when, therefore, the governor granted to him the tract solicited, and described it as "of the extent of one league, a little more or less, as explained by the map," it seemed to the court necessary to carry into effect the intention of the grantor to confirm to the claimant the tract delineated on the map, even though, as anticipated by the governor, its extent might be "a little" more than one league, provided such excess did not exceed a fraction of the usual unit of measurement in colonization grants, viz: one league, or, in other words, provided that the quantity over and above one league was such as might reasonably be deemed to have been asked for by the petitioner, and granted by the governor, under the description "a square league, a little more or less."

The clause in the third condition by which the surplus was reserved to the nation, usually called the sobrante clause, was disregarded by the court; that clause being a formula generally, and almost invariably inserted in all grants, without reference to their nature, and being not infrequently found in grants where all the boundaries are distinctly defined, and even in grants where no boundaries are mentioned, but which are for a tract of a specific length and breadth, where obviously no sobrante can remain.

On the hearing the location or existence of a northern boundary was not brought in question, but the discussion chiefly, if not exclusively, turned upon the location of the southern boundary, the right of the court to locate which by its decree was denied by the attorney of the United States. In that view, however, the court did not coincide, but by its decree it defined and located the southern boundary, thereby deciding the most important, if not the only, point discussed on the hearing.

The cause having been appealed to the supreme court, the views of this court were in some particulars found to be erroneous.

By the judgment of that court it is decided, not only that in the grant itself there is no call for a northern boundary, but that "there is no reference to the diseño for any natural object or other descriptive call to ascertain it;" that "the grant itself furnishes no other criterion for ascertaining it than the limitation of quantity expressed in the 3d condition, which thus becomes a controlling condition in the grant." The mention of quantity as "a league, a little more or less," the court regards (after rejecting the words "a little more or less") as having no meaning in a system of location and survey like that of the United States, as so explicit as to render improper any reference to the petition and the diseño, or any inquiry as to "whether the name Capitancillos had any significance as connected with the limits of the grant."

As to the propriety of the location of the southern boundary by this court, the Supreme Court expresses no opinion, but the grant is confirmed for one league of land to be taken within the southern, eastern, and western boundaries mentioned therein, and the case is remitted that this court may declare those boundaries from the evidence on file, and such other evidence as may be produced before it.

As this court had already declared the southern and only disputed boundary of the tract, the remanding of the cause with the directions above stated appeared to this court to be an instruction to review and reconsider its opinion on that point, and also to allow further evidence to be taken in relation to it. The cause having been originally heard with the consent of both parties, and without any suggestion that further evidence was desired or attainable, the application on the part of the United States for leave to take further testimony was resisted on the part of the claimant. It

seemed, however, to the court that the directions of the supreme court clearly contemplated that such testimony should be taken if offered, and that the obedience due from this court to the mandate of its superior, required it to permit either side to offer such further testimony as might be desired.

Additional testimony has therefore been taken, and it now remains for the court again to declare the boundaries as originally declared in its former decree, or differently if, on reconsideration, that decree should appear to be erroneous, or if the additional testimony is such as to induce it to change its opinion.

In the opinion heretofore delivered it was observed: "The evidence shows that the tract called Capitancillos is a valley lying along an arroyo or brook. On its southerly side extends a range of hills running from east to west. At their eastern extremity, where they are intersected by the Alamitos, these hills attain a considerable elevation, but they decline in height towards the west, where they reach and are turned by the arroyo Seco. Behind this ridge or cuchilla the main sierra or mountain chain raises itself to a great height, and is separated from the ridge of lomas bajas already spoken of by the two streams, one of which turns the lomas bajas on the east, and the other on the west, and running behind the lomas and between them and the sierra, their headwaters approach to within an inconsiderable distance of each other. Upon the slopes of the ridge of low hills, as well towards the valley on the north as towards the streams behind it on the south, the best and most permanent grazing is to be found, and in this ridge are situated the valuable quicksilver mines which give to this inquiry its chief importance."

To this description it may be added that the range of low hills are not throughout their whole length entirely detached from the sierra, but are connected with it at one point by a spur, or ridge, running nearly at right angles to the general direction of the sierra and the lomas. This ridge is at its lowest point 1,100 feet above the level of the valley. The height of the Almaden peak at the eastern extremity of the lomas is about 1,500 feet above the level of the valley, but the lomas as they extend towards the west diminish in height, and are broken by various depressions, which permit easy access from the valley on the north to the arroyo Seco at the base of the sierra. The average width of the ridge is one mile and four-tenths; and though at the Almaden peak the descent to the valley is abrupt, yet further to the west the diminished height of the hills, and the frequent depressions in the ridge, permit the valley to be reached in many points by easy and gentle declivities.

It is proper to add that after the proofs were submitted, the judge, at the suggestion of the district attorney, and accompanied by that officer and the representative of the claimant, visited the premises

in order by personal inspection to become acquainted with its topography, and to be able more accurately to understand and to appreciate the testimony.

The question then to be determined is, what is the southern boundary designated in the grant?

The grant itself describes the land as bounded by the "sierra;" but the question arises, what is the natural object so designated? Is it the main chain to the south of the lomas bajas, or is it the lomas bajas themselves? The natural meaning of the term sierra would seem to point to a great mountain chain, rather than to a range of hills parallel to it, and separated from it except at one point, where the two ranges are connected by a narrow ridge or divide. On the diseño presented by Larios, the sierra is described as the "Sierra del Encino." The very remarkable oak tree from which this name was evidently derived, is situated on the main chain of mountains, and is a conspicuous object from all parts of the valley. That the "sierra" mentioned in the grant is that on which this tree is situated cannot be disputed; but still the question arises, was the term "sierra," or "Sierra del Encino," used by the grantor to designate the lofty chain of mountains on which the oak tree is situated, as distinguished from the lomas bajas or lower ridge to the north of it, or did he intend to include within it both ranges, and to apply the term as well to the lomas bajas as to the larger mountains behind them. In a certain sense the lomas bajas are evidently a part of the sierra with which they are connected, as has been explained; but the question is not whether they form a part of or belong to the sierra geologically or topographically, but whether they were so known and recognised, and so treated by the governor when he described the tract as bounded by the sierra.

On the part of the claimant numerous witnesses testify that the part of the sierra Azul on which the oak tree is situated is called Sierra del Encino, but that the low range of hills on the south of it, and separated from it by the creeks, was never known as the sierra; that they were, until the discovery of the mine, called Lomas Bajas, and subsequently, "las lomas de la mina de Luis Chaboya," or "la cuchilla de la mina de Chaboya." They describe the range known as the "sierra" as rising from the streams, and the latter as running between the sierra and the ridge known as the Cuchilla de la Mina. No less than nine witnesses, many of whom have lived in the neighborhood from 20 to 40 years, testify to these facts, and to their testimony may be added that afforded by the diseño of Berreyesa, who, at the time he presented it, had been established in the cañada about nine years. On this map the two ranges of hills are distinctly delineated, separated by a broad valley, far broader than the ravine actually existing. The lower range is inscribed "Lomas Bajas," while the upper is marked "Sierra Azul," thus indicating that in 1842, at the time when the

petitions of both Larios and Berreyesa were before the governor, and before the question had any importance, a marked discrimination was made, even in the rude diseño presented by the applicant, between the ridge of lomas bajas and the sierra behind it.

Since the case has been remanded the testimony of three witnesses on this point has been taken by the United States.

Antonio Suñol testifies that he never heard of the Sierra del Encino, nor of any range of hills called the "Cuchilla de la mina de Luis Chaboya;" that the mouth of the mine is in the "Sierra Azul." On his cross-examination he states that the ridge has been called "Lomas," or "Lomas Muertes de la Sierra Azul," and that after the mine was discovered "we always said the mine of Chaboya, which is in the Sierra Azul."

José Maria Amador testifies that he does not know the Sierra del Encino, nor "La Cuchilla de la mina de Luis Chaboya;" that the mine is situated in the "lomas bajas de la Sierra Azul." "It is in the Sierra Azul itself. The sierra descends regularly; there is no breach nor separation in it. The mine is on a low loma. It is all known as the Sierra Azul from the foot to the top of it."

José Romero testifies that he does not know the Sierra del Encino nor the Cuchilla de la mina de Luis Chaboya; that the name of the mountain on which the mine is situated is the "Sierra Azul." On his cross-examination, in reply to an inquiry as to the name of the creek "which passes between the Guadalupe mine and the sierra," he states its name to be the "El arroyito del corral del defunto Rafael;" that he knows the loma where the Guadalupe mine is situated, and the sierra in which it is; that "loma" and "sierra" mean the same thing "with us."

It is unnecessary to comment on the testimony of these witnesses, for the preponderance of evidence is clearly against the accuracy of their statements or their recollection.

If, then, we were to fix the southern boundary of this tract by the calls of the grant alone, the evidence would leave no room to doubt that the grantor meant by the term "sierra" in the grant the lofty chain of mountains on which the oak tree is situated, and which, being for the most part covered with chemisal, presents an azure hue at a distance, rather than the lower and parallel ridge known as the lomas bajas or cuchilla de la mina, and which is for the most part covered with wild oats, and suitable for grazing.

But the great difficulty in the case is presented by the diseño which accompanies the espediente of Justo Larios. On this diseño a single range of hills, inscribed "Sierra del Encino," is rudely delineated. From this range the two creeks are represented as debouching into the plain. If this sierra be the main sierra, the lomas bajas are entirely omitted on the sketch.

I have been much impressed with the very able and elaborate argument on this point submitted by the counsel who appeared for

the United States, as also by the testimony of many surveyors, that guided by this map alone, and crossing the valley in a southerly direction, they would stop or fix the southern limit of the tract at the foot of the first hills which rise from the valley—i. e., at the foot of the "lomas bajas."

It is urged that the southern boundary, as shown by this diseño, is a line drawn at the foot of the range inscribed "Sierra del Encino," and from one creek to the other, and not along the course of either; that if the range delineated was intended to represent the main sierra, the arroyos, and especially the Seco, would have been represented as running below or to the north of it, and not debouching from it, and that the lomas bajas would not have been omitted.

It may perhaps be admitted that if we were to be guided by the diseño alone, it would not be easy to avoid the conclusions so earnestly and ingeniously pressed upon the court in the brief submitted by the counsel for the United States. The indications, however, afforded by the diseño are not free from all ambiguity. On that sketch the two streams are represented as debouching from the hills at points situated on a line nearly horizontal. The map of Lewis, exhibited on the part of the United States, shows that the arroyo de los Alamitos, called in the Larios diseño arroyo de los Capitancillos, issues from the foot-hills or lomas bajas at a point considerably to the north of that where the arroyo Seco turns the western extremity of those hills, and debouches into the plain. If a line then be drawn from the point where the Alamitos debouches to that where the Seco turns the lomas, it would depart considerably from a horizontal line.

Again, the space enclosed between the creeks and the sierra is represented on the Larios diseño as not quite twice as long as it is broad. But if the sierra on the diseño be taken to mean the lomas bajas, the map of Lewis shows that the tract between the Alamitos and the Seco on the east and west, and the Capitancillos and the foot of the lomas on the north and south, is about four times as long as it is broad.

Again, the arroyo de los Capitancillos is represented on the Larios diseño as running towards the southeast diagonally across the valley, and then turning towards the south and running in a southern direction perpendicularly to the valley, and nearly parallel to the arroyo Seco, for a considerable distance, until it reaches the sierra. But if the sierra which it reaches was intended to be the lomas bajas, it should be drawn as meeting them while running in a southeasterly or diagonal course; no part of its southerly or perpendicular course should be represented. The map of Lewis shows that the course of the stream from a point above or near the Hacienda is delineated on the Larios diseño with tolerable accuracy, and that from that point it flows in a northerly direction

perpendicularly to the valley for a considerable distance, and it is only after turning and leaving the lomas bajas that it takes a direction diagonally across the valley. If then the red line drawn on Lewis's map as the southern boundary of the tract were drawn on the Larios diseño to the corresponding point of the Capitancillos, it would strike the latter not far from the letter "A" on that diseño, and that portion of the stream flowing in a north and south direction would be excluded.

Again, by looking on Lewis's map it will be seen that the arroyo Seco, after running in a westerly direction along the base of the main sierra, and between it and the lomas, on reaching the end of the latter makes a sudden bend to the north, and debouches into the valley at a point very near the base of the sierra; in other words, at this point the flat or valley land extends nearly up to the base of the main sierra.

If, then, a line be drawn from this point to the most southerly point of the arroyo de los Alamitos or Capitancillos, on the diseño of Larios, it would nearly coincide with the base of the sierra, as contended for by the claimant, and would, moreover, be almost a straight line, and in this respect correspond with the indications of the diseño better than the very sinuous and irregular line which is found by following the base of the foot-hills which project into the valley. For it is to be observed that neither of the lines run by Lewis as the southern boundary of the tract follow what is claimed to be the boundary indicated by the diseño, viz: the base of the lomas, but run upon the sides of, and over, those hills at a considerable and apparently arbitrary distance from their base.

The slightest comparison between the diseño of Larios and a map of the country shows the former to be, in many other respects, inaccurate and defective. The angle of the creeks at which the eastern boundary commences is not laid down, and the lomita which is also called for in the description of that line does not appear. It is, therefore, no very extravagant supposition that the lomas bajas were also omitted, particularly when the circumstances under which the diseño was drawn, as detailed by Petronillo Rios, are considered.

The foregoing observations I think warrant us in saying that the diseño of Larios does not afford those clear, certain, and unmistakable indications of the location of the southern boundary contended for by the counsel for the United States.

But, in determining this question, we are not at liberty to confine our attention to the Larios diseño alone. The record shows that Justo Larios and Berreyesa had occupied different portions of the cañada de los Capitancillos for many years before the date of their applications to the governor for their respective grants. Between them a dispute as to their boundaries had arisen, and before

the grant to either was issued, they appeared before José Z. Fernandez, and agreed upon the line which should form their common boundary. The description of this line, as given in the report of Fernandez, was inserted in both grants, and the line was marked by that officer on the diseño of Berreyesa "as being the more exact." In the grant to Larios the eastern boundary is described as the rancho of citizen Berreyesa, "which has for boundary the angle," &c.; and in the grant to Berreyesa, his western boundary is in like manner described as "the rancho of citizen Justo Larios, which has for boundary the angle," &c. The eastern boundary of Justo Larios is thus indirectly described in his own grant, but directly in that of Berreyesa, while the western boundary of the latter is in like manner indirectly described in his own grant, but directly in that of Larios. At the time of making the grant the governor had probably before him both diseños, but certainly that of Berreyesa, on which the boundary line described by him in both grants had been marked by Fernandez for his information. In determining, therefore, the boundaries of Justo Larios, it seems to me not only proper but necessary to recur to the grant to Berreyesa, where alone the boundary of Justo Larios is described as such, and to the diseño of Berreyesa upon which it was marked "as being more exact."

The governor did not grant to Justo Larios the tract delineated on his diseño, viz: the land between the arroyo Seco and that of Capitancillos, or a line to the east of the latter. He granted the land between the arroyo Seco and a line drawn from the angle of the creeks, the eastern "falda" of the "lomita in the centre of the cañada to the sierra;" and this line was marked on the Berreyesa diseño, and at considerable distance to the west of the Capitancillos or Alamitos.

In declaring this boundary, therefore, which was different from that solicited by Larios and indicated on his diseño, it seems to me that we are compelled to resort to the diseño of Berreyesa, which becomes quoad hôc the diseño to which the grant refers. On the Berreyesa diseño the two ranges of hills are rudely but unmistakably drawn; the first, or most northern, are inscribed "Lomas Bajas," while the higher ridge to the south is inscribed "Sierra Azul." The valley represented as lying between them, though its width is grossly exaggerated, yet serves by that very exaggeration to indicate the discrimination in the grantor's mind between the "sierra" and the "Lomas Bajas."

The dotted line commencing at the angle of the creeks is produced across the lomas bajas, across the intermediate valley, and the Alamitos represented as flowing through it to the base of the main sierra.

If this line be the eastern boundary of Justo Larios, as I think

it must be considered, there can be no doubt as to the range of mountains intended by the term "sierra" in his grant.

It is urged that Berreyesa had applied, not only for the Cañada de los Capitancillos, but for "all the hills which pertain to it;" whereas Justo Larios petitioned only for a part of the cañada alone; that, therefore, in the grant to Berreyesa, and on his diseño, the line was extended so as to include the low hills solicited, but that such an extension ought not to be made in favor of Larios, who solicited the cañada alone.

This argument assumes that the term cañada, as used in these grants, does not include the low hills at the foot of the sierra, but that it is bounded and limited by them. But the language of the petition of Berreyesa, referred to, seems to convey the contrary idea, for it speaks of the low hills "which belong to or pertain to the said cañada." He does not ask for the cañada and also a portion of the sierra, but for the cañada and the low hills pertaining to it. It is surely not reasonable to say that he considered and asked for the low hills as not belonging to or a part of the cañada solicited.

Again: the governor, who with respect to Berreyesa, it is admitted, intended to grant the low hills, describes the tract granted to him "as a part of the place known as the Cañada de los Capitancillos," thus showing that, in his apprehension at least, the place known as the Cañada de los Capitancillos did include the low hills solicited. In the grant to Larios, it is described as the "place known by the name of Capitancillos," the word cañada being omitted in the grant, though it is inserted in the decree of concession.

Again: the governor, confessedly intending to include within the grant to Berreyesa the lomas or low hills, bounds his grant by the "sierra," with both petitions and both diseños before him; and with his attention directed to the discrimination between the sierra and low hills belonging to the cañada, he nevertheless uses the same term "sierra" in describing the boundary of Larios. Can we infer that in the grant to Berreyesa he meant by this term one natural object, and in that to Larios another? I think not. The sierras referred to in both grants must be the same, and, as that intended in the Berreyesa grant is unmistakable, we are enabled to fix with corresponding certainty the sierra referred to in the grant to Justo Larios.

I have given to this case much attention. I am not insensible to the considerations so forcibly urged by the counsel for the United States. I have endeavored to decide it uninfluenced by the previous opinion of this court. Upon the best consideration I have been able to give to the questions involved, I have not been able to discover that that opinion was erroneous.

The remaining point to be considered is as to the form of the decree.

In the opinion of the Supreme Court, 20th Howard, 426, it is said: "The southern, western, and eastern boundaries of the land granted to Larios are well defined, and the objects exist by which those limits can be ascertained. There is no call in the grant for a northern boundary, nor is there any reference to the diseño for any natural object, or other descriptive call, to ascertain it. The grant itself furnishes no other criterion for determining that boundary than the limitation as is expressed in the 3d condition. * * * * If the limitation of quantity had not been so explicitly declared, it might have been proper to have referred to the petition or diseño, or to have inquired if the name Capitancillos had any significance as connected with the limits of the tract, in order to give effect to the grant. But there is no necessity for additional inquiries. The grant is not affected by any ambiguity," &c. * * * * * * "The grant to Larios is for one league of land to be taken within the southern, eastern, and western boundaries designated therein, and which is to be located at the election of the grantee or his assigns, under the restrictions established for the survey and location of private land claims in California by the executive department of this government."

The district court is then directed to declare the external boundaries designated in the grant.

From the foregoing, it is, I think, evident that the Supreme Court considered the southern, western, and eastern boundaries as alone designated in the grant; and as the limitation of quantity was explicit, and there was no ambiguity in the grant, the northern boundary was to be determined by quantity alone, and that "it was not authorized to depart from the grant to obtain evidence to contradict, vary, or limit its import."

When, therefore, this court has, pursuant to the directions of the Supreme Court, declared those three external boundaries, it has declared "the southern, western, and eastern boundaries of the land granted to Larios," and the remaining boundary is to be ascertained by quantity.

It is urged on the part of the United States that the league is to be taken within the three boundaries named, but is not of necessity bounded by them; that its location within them is to be subject to the restrictions established by the executive, and that the northern boundary of the league is to be determined by the northern boundary of the tract within which it is to be located.

The Supreme Court undoubtedly say that the league is to be located within the three boundaries mentioned. But a reference to the preceding part of the opinion dispels any doubt which might be suggested by this expression.

It is said unequivocally that the southern, western, and eastern

boundaries of the land granted to Larios, not of the tract within which the league granted to him is to be taken, are well defined. And the Supreme Court explicitly declare that the northern boundary is to be determined by the limitation of quantity alone. "The grant itself furnishes no other evidence for determining that boundary than the limitation of quantity as expressed in the 3d condition. This is a controlling condition in the grant." And they add that no additional inquiries to ascertain that boundary (the grant being free from ambiguity) are necessary, or authorized by law.

It seems to me that the import of this language is unmistakable, and the land granted to Larios must be decreed by this court to be one league of land bounded by the three external boundaries mentioned in the grant, as the same are ascertained and declared in this opinion; the fourth or northern boundary to be ascertained by quantity, and to be run at the election of the grantee, or his assigns, under the restrictions established for the location and survey of private land claims in California, by the executive department of the government of the United States.

Endorsed: Filed October 4, 1858.

W. H. CHEVERS, *Clerk*.

Decree.

District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants, vs. CHARLES FOSSAT, Appellee. } District Court, No. 132. Land Commission, No. 340.

Stated Term, October 4th, 1858.

And now come the said Charles Fossat, by his attorney, and the United States by theirs, and the mandate of the Supreme Court of the United States having been heretofore filed in this court, duly authenticated under the seal of the said Supreme Court, and certified by the clerk thereof, whereby it appears that at the December term of said Supreme Court for the year 1857—that is to say, on the 30th day of April, 1858—upon the appeal by the United States, from the decree of this court confirming the claim of the said Charles Fossat, (which appeal came on to be heard before the said Supreme Court upon the transcript of the record of this court,) the said Supreme Court rendered and pronounced a judgment and decree of this court, *is* in the following words, to wit:

"And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on con-

sideration whereof it is now here ordered, adjudged, and decreed by this court, that the decree of the said district court in this cause be, and the same is, hereby reversed, and that this cause be, and the same is, hereby remanded to the said district court, with directions to that court to enter a decree in this cause in conformity to the opinion of this court."

And a duly certified copy of the said opinion of the Supreme Court of the United States having been filed in this court, and this cause coming on now to be heard on the transcript of the proceedings and decision of the board of commissioners to ascertain and settle the private land claims in the State of California, and the papers and evidence on which the former decision of this court was made, and upon the further evidence given by the parties since the filing of the said mandate and opinion of the Supreme Court, and counsel for the respective parties having been heard, and this court proceeding now to enter a final decree herein upon the evidence, and in conformity to the said opinion of the Supreme Court of the United States:

It is ordered, adjudged, and decreed by this court, that the grant made to Justo Larios, from whom the said Charles Fossat derives his title, is a good and valid grant of one league of land, and no more, being the land known as "Los Capitancillos," situated in the county of Santa Clara, in the State of California, and bounded by the sierra, by the arroyo Seco on the side of the establishment of Santa Clara, and by the rancho of the citizen José R. Berreyesa, which has for boundary a line running from the junction of the arroyo Seco and arroyo de los Alamitos southward to the sierra, passing by the eastern base of the small hill situate in the centre of the cañada, which is designated in the espedientes and grants of Justo Larios and José Reyes Berreyesa as "la falda de la loma," and by a line or lines on the north, to be determined by the limitation of the quantity of land to be included.

And for the more full and precise description, the following are declared, from all the evidence given, to be the boundaries, as above intended and designated, of the grant to said Justo Larios, to wit:

The southern boundary is the base of the main sierra or mountain range, on a spur of which is situated, as shown in evidence, a certain well known and conspicuous live-oak tree, or "encino," and portions of which sierra or mountain range are separated from the range of hills called "Cuchilla de la Mina," or "Cuchilla de la Mina de Luis Chabolla," (and which Cuchilla is the same range of hills in which are situated the quicksilver *silver* known as the Guadalupe and New Almaden mines,) by narrow valleys or gorges, in which flow, from eastward to westward, the arroyo de los Capitancillos, and, from westward to eastward, the arroyo de los Alamitos—the said southern boundary line being so drawn as to in-

clude the bottom and low lands along the base of said sierra, and lying between it and the said arroyos. The eastern boundary is a straight line, commencing at the junction of a certain rivulet called arroyo Seco with the arroyo de los Alamitos, and thence running southward to the aforesaid main sierra or mountain range, passing by the point or part of the small hill situated in the centre of the cañada, which is designated in the espedientes and grants of Justo Larios and José Reyes Berreyesa as "la falda de la loma," and crossing the range of hills designated above as the "Cuchilla de la Mina," or "Cuchilla de la Mina de Luis Chabolla," in which are situated the said Guadalupe and New Almaden mines, and which is the same range of hills designated "Lomas Bajas," on the diseño or map in the espediente of José Reyes Berreyesa on file in this case, the said eastern line crossing also the said arroyo de los Alamitos and terminating at the base of said main sierra, and the said eastern line herein described being intended to be the same line agreed upon as the line of division between the lands of Justo Larios and José Reyes Berreyesa, as expressed in the respective espedientes and grants of said Justo Larios and José Reyes Berreyesa, and delineated by the dotted line on the said diseño or map in the espediente of José Reyes Berreyesa; and in the location of said line reference is made to the description thereof in the said espedientes and grants, and the delineation thereof on the said diseño or map in the espediente of José Reyes Berreyesa, which espedientes, grants and diseño, or map, are on file and in evidence in this case. The western boundary is the arroyo Seco on the side of the establishment of Santa Clara, the said arroyo Seco being the continuation of the stream above designated as the arroyo de los Capitancillos; and the northern boundary is a line or lines to be located at the election of the grantee or his assigns, under the restrictions established for the location and survey of private land claims in California by the executive department of this government, in such manner that between the said northern boundary and the said southern line, and the said eastern and western lines, there shall be contained the quantity of one square league of land, and no more, in one entire tract.

And it is further ordered, adjudged, and decreed, by this court, that the claim of the appellee, Charles Fossat, to a portion of said tract of land is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent of and for the quantity of three-fourths of one square league of land, and no more, being the eastern portion of said tract of land granted to Justo Larios, as the same is above described; the dividing line between the said eastern three-quarters of a square league of land confirmed to said Fossat, and the residue of said tract of one league of land granted to Justo Larios, being a straight line running from the said southern boundary line of the land granted to said Justo

Larios to the northern boundary line thereof, as said lines are herein designated, in a direction north forty-five degrees east, (N. 45° E.) true meridian, which is a direction nearly parallel to the general course of that arroyo Seco which is declared to be the western boundary of the land granted to the said Justo Larios; the said boundary lines of the tract hereby confirmed to the said Charles Fossat being more particularly designated as follows, to wit:

Commencing at the base of the said main sierra, south of the said arroyo de los Alamitos, at the point of intersection of the southern and eastern boundary lines of the land granted to the said Justo Larios, as said lines are designated in this decree; and thence running westwardly, along the said southern line of the land granted to Justo Larios, to a point at such a distance from the said point of commencement that by running a line thence north forty-five degrees east, (N. 45° E.,) true meridian, till it intersects the northern line of the land granted to Justo Larios, as the same is directed to be located by this decree; and thence, following said northern line eastwardly to its intersection with the eastern line of the land granted to Justo Larios, as designated in this decree; and thence, following said eastern line southwardly, to the point of commencement. The said lines shall include three-fourths of one square league of land, and no more; and the said lines, so run, are hereby declared to be the boundary lines of the land hereby confirmed to the said appellee, Charles Fossat.

OGDEN HOFFMAN,
Dist. Judge.

Indorsed: Filed October 18th, 1858.

W. H. CHEVERS, *Clerk.*

Order allowing the withdrawal of the photographic Exhibit attached to deposition of C. Watkins.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the 19th day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. CHARLES FOSSATT. } No. 132.

By consent of parties, and for the despatch of the transcript on appeal in the case, it is ordered that leave be given to withdaraw from the files of the court Exhibit W. H. C. No. 1, attached to the deposition of Carleton Watkins, being a photographic view, in order that it may be placed in the record prepared for an appeal

to the Supreme Court, it being further ordered that the claimants have leave to file a duplicate photographic copy of the same view, in lieu and stead of the one now permitted to be withdrawn, and with the same effect as the one originally filed.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed October 19th, 1858.
W. H. CHEVERS, *Clerk.*

Order granting Appeal to the United States.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the 19th day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
CHARLES FOSSATT. } No. 132.

In this case, on the application of P. Della Torre, esq., U. S. attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed October 19th, 1858.
W. H. CHEVERS, *Clerk.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing pages, numbered from one to two hundred and thirty-seven, both inclusive, contain a full, true, and correct transcript of the opinion and mandate of the Supreme Court, and the orders, depositions, exhibits, (with the exception that the exhibit to the deposition of John D. Hoffman, being a large sketch in water colors, is supplied by a photograph on a smaller scale,) opinion and decree filed in this office in the case of The United States, appellants, v. Charles Fossat, appellee, remanded to this court from the Supreme Court for further testimony.

In testimony whereof I have hereunto set my hand and affixed [SEAL.] the seal of said court this 19th day of October, A. D. 1858, and of our independence the 83d.

W. H. CHEVERS, *Clerk.*

Filed 11th December, 1858.